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STATUTORY RULES OF NORTHERN IRELAND

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**1980 No. 346**

**SUPREME COURT, NORTHERN  
IRELANDPROCEDURE**

**The Rules of the Supreme Court  
(Northern Ireland) (Revision) 1980**

*Made - - - - 1st October 1980*

*To be laid before Parliament*

*Coming into operation 1st January 1981*

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978<sup>(1)</sup> to make, amend or revoke rules regulating the pleading, practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby, with the concurrence of the Lord Chancellor, exercise these powers and all other powers enabling us in that behalf as follows:

1. The Rules set out in Schedule 1 hereto are hereby made.
- 2.—(1) The Rules and Orders specified in Part I of Schedule 2 hereto are, with the exception of the provisions specified in column 1 of Part II thereof, hereby revoked, but subject to rule 4 hereof and the provision in relation to the said Part I made at the end of that Part.  
(2) The provisions specified in column 1 of Part II of Schedule 2 shall have effect with such modifications as are specified in column 2 thereof.
3. The provisions specified in column 1 of Schedule 3 hereto are hereby repealed or revoked to the extent specified in column 2 of that Schedule.
4. As respects proceedings commenced before 1st January 1981, the times for entering an appearance and service of pleadings shall continue to be those prescribed in the Rules of the Supreme Court (Northern Ireland) 1936<sup>(2)</sup>.
5. These rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Revision) 1980 and shall come into operation on 1st January 1981.

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(1) 1978 c. 23

(2) S.R. & O. 1936 No. 70 (II, p. 2554)

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Dated the 25th day of September 1980.

*Lowry  
John MacDermott  
Donald Murray  
R. D. Carsewell  
J. J. Sheil  
Owen Catchpole  
James McFarland*

I concur

Dated the 1st day of October 1980.

*Hailsham of St. Marylebone C.*

## SCHEDULE 1

### **The Rules of the Supreme Court (Northern Ireland) 1980**

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Signature

#### PRELIMINARY

## ORDER 1

### CITATION, APPLICATION, INTERPRETATION AND FORMS : BUSINESS OF THE SUPREME COURT

#### PART I

### CITATION, APPLICATION, INTERPRETATION AND FORMS

#### **Citation**

1. These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) 1980.

[E.r. 1]

#### **Application**

2.—(1) Subject to the following provisions of this rule, these Rules shall have effect in relation to all proceedings in the Supreme Court.

(2) These Rules, other than Part II of this Order and Order 4, Order 59 and Order 62 shall not have effect in relation to—

- (a) proceedings under the Bankruptcy Acts (Northern Ireland) 1857 to 1980;
- (b) proceedings relating to the winding-up of companies;
- (c) matrimonial proceedings.

(3) These Rules shall not have effect in relation to any criminal proceedings other than any criminal proceedings to which Order 53, Order 59, Order 62 or Order 79 applies.

(4) In the case of the proceedings mentioned in paragraphs (2) and (3) nothing in those paragraphs shall be taken as affecting any provision of any rules (whether made under the Act or any other statutory provision) by virtue of which these Rules or any provisions thereof are applied in relation to any of those proceedings.

[E.r. 2].

#### **Definitions**

3.—(1) In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them namely—

“the Act” means the Judicature (Northern Ireland) Act 1978(3);

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(3) 1978 c. 23

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“an action for personal injuries” means an action in which there is a claim for damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death, and “personal injuries” includes any disease and any impairment of a person's physical or mental condition;

“appropriate office” means the office in which the cause or matter is proceeding;

“Central Office” means the Central Office of the Supreme Court;

“master” means a master or registrar of the Supreme Court mentioned in the first column of Schedule 3 to the Act other than the Master (Taxing Office);

“the matrimonial causes rules” means rules made under Article 54 of the Matrimonial Causes (Northern Ireland) Order 1978(4);

“originating summons” means every summons other than a summons in a pending cause or matter;

“pleading” does not include a writ (except a statement of claim indorsed thereon), a petition, summons or preliminary act;

“probate action” has the meaning assigned to it by Order 76;

“receiver” includes a manager or consignee;

“vacation” means the interval between the end of any of the sittings mentioned in Order 64, rule 1, and the beginning of the next sittings;

“writ” means a writ of summons.

(2) In these Rules, unless the context otherwise requires, “the Court” means the High Court or any one or more judges thereof whether sitting in court or in chambers or any master, but the foregoing provision shall not be taken as affecting any provision of these Rules or, in particular, Order 32, by rule 11, virtue of which the jurisdiction of a master is define, and regulated.

[E.r. 4]

#### **Construction of references to Order, Rules, etc.**

4.—(1) Unless the context otherwise requires, any reference in these Rules to a specified Order, rule or Appendix is a reference to that Order or rule or that Appendix to, these Rules and any reference to a specified rule, paragraph or sub-paragraph is a reference to that rule of the Order, that paragraph of the rule or that sub-paragraph of the paragraph in which the reference occurs.

(2) Any reference in these Rules to anything done under a rule of these Rules includes a reference to the same thing done before the commencement of that rule under any corresponding rule of court ceasing to have effect on the commencement of that rule.

(3) Except where the context otherwise requires, any reference in these Rules to any statutory provision shall be construed as a reference to that provision as amended, extended or applied by or under any other statutory provision.

[E.r. 5]

#### **Construction of references to action, etc. for possession of land**

5. Except where the context otherwise requires, references in these rules to an action or claim for the possession of land shall be construed as including references to proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the land or to the possession thereof.

[E.r. 6]

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(4) [S.I. 1978 No. 1045 \(N.I. 15\)](#)

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### **Construction of references to Lord Chief Justice**

6. For references in these Rules to the Lord Chief Justice there shall be substituted references to the senior Lord Justice of Appeal in relation to any period during which the functions of the Lord Chief Justice are being exercised by the senior Lord Justice of Appeal pursuant to section 11 of the Act.

[E.r. 7]

### **Construction of certain references to the Treasury**

7. Any reference in these Rules to the Treasury shall, where the reference occurs in a provision relating to the giving of permission by the Treasury under the Exchange Control Act 1947 for the payment of money, be construed as including a reference to any person to whom the power of the Treasury to give such permission has been duly delegated.

[E.r. 8]

### **Forms**

8. The forms in the Appendices shall be used where applicable with such variations as the circumstances of the particular case require.

[E.r. 9]

### **Rules not to exclude conduct of business by post**

9. Nothing in these Rules shall prejudice any power to regulate the practice of the Court by giving directions enabling any business or class of business to be conducted by post.

[E.r. 10]

## **PART II**

### **BUSINESS OF THE SUPREME COURT**

#### *A. DISTRIBUTION AMONGST DIVISIONS OF THE SUPREME COURT*

### **Assignment to Chancery Division**

10. There shall be assigned to the Chancery Division—

- (a) all causes and matters (other than Admiralty) for any of the following purposes—
  - (i) the administration of the estates of deceased persons;
  - (ii) the dissolution of partnerships or the taking of partnership or other accounts;
  - (iii) the redemption or foreclosure of mortgages;
  - (iv) the raising of portions or other charges on land;
  - (v) the sale and distribution of the proceeds of property subject to any lien or charge;
  - (vi) the execution of trusts, charitable or private;
  - (vii) the rectification, setting aside or cancellation of deeds or other written instruments;
  - (viii) the specific performance of contracts between vendors and purchasers of land, including contracts for leases;
  - (ix) the partition or sale of land;



- (b) an proceedings under the Bankruptcy Acts (Northern Ireland) 1857 to 1980 and the Companies Acts (Northern Ireland) 1960 and 1978;
- (c) all causes and matters which under, by virtue of, or in pursuance of any statutory provision were assigned to the Chancery Judge or the Chancery Division of the High Court immediately before the coming into force of this Order;
- (d) all causes and matters which under, by virtue of or in pursuance of any statutory provision are assigned to the Chancery Judge or the Chancery Division.

#### **Assignment to Queen's Bench Division**

11. There shall be assigned to the Queen's Bench Division—
- (a) all causes and matters civil and criminal which were within the jurisdiction of the Queen's Bench Division immediately before the coming into force of this Order;
  - (b) the Admiralty jurisdiction of the High Court;
  - (c) proceedings under Part VII of the Judgments (Enforcement) Act (Northern Ireland) 1969<sup>(5)</sup> except such proceedings as by this Order are assigned to the Family Division;
  - (d) all causes and matters not assigned by this Order or any other statutory provision to another division.

#### **Assignment to Family Division**

12. There shall be assigned to the Family Division—
- (a) all causes and matters in relation to—
    - (i) the grant and revocation of probate of wills and letters of administration of estates of deceased persons;
    - (ii) divorce, nullity of marriage, judicial separation, or jactitation of marriage, or subject to rule 1, any matter arising therefrom or connected therewith, a decree of presumption of death and dissolution of marriage and any other matters with respect to which rules of court may be made by virtue of Article 54(1) of the Matrimonial Causes (Northern Ireland) Order 1978;
    - (iii) wardship, adoption and guardianship of minors;
  - (b) proceedings under—
    - (i) the Maintenance Orders (Facilities for Enforcement) Act 1920<sup>(6)</sup>, Part II of the Maintenance Orders Act 1950<sup>(7)</sup> and the Maintenance and Affiliation Orders Act (Northern Ireland) 1966<sup>(8)</sup>;
    - (ii) the Legitimacy Declaration Act (Ireland) 1868<sup>(9)</sup>;
    - (iii) section 13<sup>(8)</sup> of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966;
    - (iv) Part VII of the Judgments (Enforcement) Act (Northern Ireland) 1969 in relation to orders made by the Court in matrimonial proceedings for the payment of money or by the Enforcement of Judgments Office in relation to the enforcement of such orders;
  - (c) proceedings for a declaration with respect to a person's matrimonial status;

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(5) 1969 c. 30 (N.I.)  
(6) 1920 c. 33  
(7) 1950 c. 37  
(8) 1966 c. 35 (N.I.)  
(9) 1868 c. 20

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- (d) all jurisdiction in relation to patients exercisable before the coming into force of section 28 of the Act by the Lord Chief Justice, or any other person under the Lunacy Regulation (Ireland) Act 1871(10) or any other statutory provision or by virtue of Her Majesty's Sign Manual;
- (e) all causes and matters which under, by virtue of or in pursuance of any Statutory provision are assigned to the Family Division.

## *B. ASSIGNMENT OF BUSINESS TO DEPARTMENTS*

### **Central Office**

13. There shall be transacted in the Central Office—
- (a) all business in connection with causes and matters assigned to the Queen's Bench Division;
  - (b) all business in connection with the jurisdiction of the Court of Appeal;
  - (c) all the business heretofore transacted in the Central Office, except such business as by this Order is assigned to any other office.

### **Chancery Office**

14. There shall be transacted in the Chancery Office all business in connection with causes and matters assigned to the Chancery Division, except such business as by rule 13(b) and rule 15 is assigned to the Central Office and the Bankruptcy and Companies Office respectively.

### **Bankruptcy and Companies Office**

15. There shall be transacted in the Bankruptcy and Companies Office all business in connection with proceedings under the Bankruptcy Acts (Northern Ireland) 1857 to 1980 and the Companies Acts (Northern Ireland) 1960 and 1978, except such business as by rule 13(b) is assigned to the Central Office.

### **Probate and Matrimonial Office**

16. There shall be transacted in the Probate and Matrimonial Office all business in connection with causes and matters assigned to the Family Division, except such business as by rule 13(b) and rule 17 is assigned to the Central Office and the Office of Care and Protection respectively.

### **Office of Care and Protection**

17. There shall be transacted in the Office of Care and Protection all business in connection with causes or matters assigned to the Family Division under rule 12(a)(iii) and (d).

### **Taxing Office**

18. There shall be transacted in the Taxing Office—
- (a) the taxation of—
    - (i) all costs in civil proceedings in the High Court and Court of Appeal;
    - (ii) all costs in criminal proceedings in the Crown Court and Court of Appeal;
    - (iii) all costs of or incidental to any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any statutory provision (not being

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(10) 1871 c. 22

- proceedings in the Supreme Court) where such costs are, by virtue of any statutory provision, taxable in the High Court;
- (iv) all costs taxable pursuant to an order made by the Taxing Master under the Solicitors (Ireland) Act 1849<sup>(11)</sup> or Article 66(2) of the Solicitors (Northern Ireland) Order 1976<sup>(12)</sup>;
  - (v) all other costs which under any statutory provision are required to be taxed or assessed by the Master (Taxing Office);
- (b) the measurement of a liquidator's remuneration pursuant to Order 74, rule 33 of the Rules of the Supreme Court (Northern Ireland) 1936<sup>(13)</sup>;
  - (c) the measurement of an accountant's remuneration pursuant to Order 88, rule 200 of the Rules of the Supreme Court (Northern Ireland) 1936.

## ORDER 2

### EFFECT OF NON-COMPLIANCE

#### **Non-compliance with Rules**

1.—(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings or any document, judgment or order therein.

(2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed.

[E.r. 1]

#### **Application to set aside for irregularity**

2.—(1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

(2) An application under this rule may be made by summons or motion and the grounds of objection must be stated in the summons or notice of motion.

[E.r. 2]

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<sup>(11)</sup> 1849 c. 53

<sup>(12)</sup> S.I. 1976 No. 582 (N.I. 12)

<sup>(13)</sup> S.R. & O. 1936 No. 70 (II, p. 2559)

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## ORDER 3

### TIME

#### **“Month” means calendar month**

1. Without prejudice to section 5 of the Interpretation Act 1978<sup>(14)</sup> in its application to these Rules, the word “month”, where it occurs in any judgment, order, direction or other document forming part of any proceedings in the Supreme Court, means a calendar month unless the context otherwise requires.

[E.r. 1]

#### **Reckoning periods of time**

2.—(1) Any period of time fixed by these Rules or by any judgment, order or direction for doing any act shall be reckoned in accordance with the following provisions of this rule.

(2) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.

(3) Where the act is required to be done within or not less than a specified period before a specified date, the period ends immediately before that date.

(4) Where the act is required to be done a specified number of clear days before or after a specified date, at least that number of days must intervene between the day on which the act is done and that date.

(5) Where, apart from this paragraph, the period in question, being a period of 7 days or less, would include a Saturday, Sunday or bank holiday, Christmas Day or Good Friday, that day shall be excluded.

(6) In paragraph (5) “bank holiday” means a day which is, or is to be observed as, a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971<sup>(15)</sup>.

[E.r. 2]

#### **Long Vacation excluded from time for service, etc. of pleadings**

3. Unless the Court otherwise directs, the period of the Long Vacation shall be excluded in reckoning any period prescribed by these Rules or by any order or direction for serving, filing or amending any pleading.

[E.r. 3]

#### **Expiration of time when office closed**

4. Where the time prescribed by these Rules, or by any judgment, order or direction, for doing any act at an office of the Supreme Court expires on a day on which that office is closed, and by reason thereof that act cannot be done on that day, the act shall be in time if done on the next day on which that office is open.

[E.r. 4]

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(14) 1978 c. 30

(15) 1971 c. 80

### **Extension, etc. of time**

5.—(1) The Court may, on such terms as it thinks just by order extend or abridge the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act in any proceedings.

(2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.

(3) The period, within which a person is required by these Rules, or by any order or direction, to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose.

(4) In this rule references to the Court shall be construed as including references to the Court of Appeal.

[E.r. 5]

### **Notice of intention to proceed after year's delay**

6.—(1) Where a year or more has elapsed since the last proceeding in a cause or matter, the party who desires to proceed must give to every other party not less than one month's notice of his intention to proceed.

(2) Where two years or more have elapsed since the last proceeding in a cause or matter the defendant may apply to the Court by summons to dismiss the same for want of prosecution.

(3) A motion or summons on which no order was made is not a proceeding for the purpose of this rule.

[E.r. 6]

## **COMMENCEMENT AND PROGRESS OF PROCEEDINGS**

### **ORDER 4**

#### **TRANSFER AND CONSOLIDATION OF PROCEEDINGS**

##### **Transfer between Divisions**

1. A cause or matter may, at any stage of the proceedings therein, be transferred from one Division to another by order of the Court made in the Division in which the cause or matter is proceeding.

[E.r. 3]

##### **Transfer of certain pending matters to Chancery Division**

2. Where an order has been made—

(a) for the winding up of any company,

(b) for the administration under the direction of the Court of the estate of a deceased person,

then, notwithstanding rule 1, the Chancery Judge may by order at any stage transfer to the Chancery Division any cause or matter brought by or against that company, or the executors or administrators of that person.

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### **Transfers to and hearings before another Judge**

3. Any judge who consents to do so may by arrangement with the Lord Chief Justice or the judge before whom a cause or matter is pending or to whom it has been assigned, hear such cause or matter or any part thereof or application therein.

### **When parties must be heard before transfer**

4.—(1) Subject to paragraph (2), all such transfers and arrangements as are mentioned in this Order may be made with or without the application or consent of any party.

(2) Before a cause or matter is transferred from one Division to another the parties must be given an opportunity of being heard.

### **Consolidation of actions**

5. Where two or more causes or matters are pending in the same Division, then, if it appears to the Court—

- (a) that some common question of law or fact arises in both or all of them, or
- (b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or
- (c) that for some other reason it is desirable to make an order under this rule,

the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.

[E.r. 10]

## **ORDER 5**

### **MODE OF BEGINNING CIVIL PROCEEDINGS IN HIGH COURT**

#### **Mode of beginning civil proceedings**

1. Subject to the provisions of any statutory provision or of these Rules, civil proceedings in, the High Court may be begun by writ originating summons, originating motion or petition.

[E.r. 1]

#### **Proceedings which must be begun by writ**

2. Subject to the provisions of any statutory provision or of these Rules, by virtue of which any proceedings are expressly required to be begun otherwise than by writ, the following proceedings must, notwithstanding anything in rule 4, be begun by writ, that is to say, proceedings—

- (a) in which a claim is made by the plaintiff for any relief or remedy for any tort, other than trespass to land;
- (b) in which a claim made by the plaintiff is based on an allegation of fraud;
- (c) in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a statutory provision or independently of any contract or any such provision), where the damages claimed consist of or include damages in respect of the death of any person or in respect of personal injuries to any person or in respect of damage to any property;

(d) in which a claim is made by the plaintiff in respect of the infringement of a patent.

[E.r. 2]

### **Proceedings which must be begun by originating summons**

3.—(1) Proceedings by which an application is to be made to the High Court or a judge thereof under any statutory provision must be begun by originating summons except where by these Rules or by or under any statutory provision the application in question is expressly required or authorised to be made by some other means.

(2) This rule does not apply to an application made in pending proceedings.

[E.r. 3]

### **Proceedings which may be begun by writ or originating summons**

4.—(1) Except in the case of proceedings which by these Rules or by or under any statutory provision are required to be begun by writ or originating summons or are required or authorised to be begun by originating motion or petition, proceedings may be begun either by writ or originating summons as the plaintiff considers appropriate.

(2) Proceedings—

(a) in which the sole or principal question at issue is, or is likely to be, one of the construction of a statutory provision or of any instrument made under a statutory provision or of any deed, will, contract, or other document, or some other question of law, or

(b) in which there is unlikely to be any substantial dispute of fact,

are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or Order 86 or for any other reason considers the proceedings more appropriate to be begun by writ.

[E.r. 4]

### **Proceedings to be begun by motion or petition**

5. Proceedings may be begun by originating motion or petition if, but only if, by these Rules or by or under any statutory provision the proceedings in question are required or authorised to be so begun.

[E.r. 5]

### **Right to sue in person**

6.—(1) Subject to paragraph (2) and to Order 80 rule 2, any person (whether or not he sues as a trustee or personal representative or in any other representative capacity) may begin and carry on proceedings in the High Court by a solicitor or in person.

(2) Except as expressly provided by or under any statutory provision a body corporate may not begin or carry on any such proceedings otherwise than by a solicitor.

[E.r. 6]

## ORDER 6

### WRITS OF SUMMONS : GENERAL PROVISIONS

#### **Form of writ**

1. Every writ must be in Form No. 1, 2, 3 or 4 in Appendix A, as is appropriate.

[E.r. 1]

#### **Indorsement of claim**

2. Before a writ is issued it must be indorsed—
  - (a) with a statement of claim or, if the statement of claim is not indorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby;
  - (b) where the claim made by the plaintiff is for a debt or liquidated demand only, with a statement of the amount claimed in respect of the debt or demand and for costs and also with a statement that further proceedings will be stayed if, within the time limited for appearing, the defendant pays the amount so claimed to the plaintiff or his solicitor;
  - (c) where the claim made by the plaintiff is for possession of land, with a statement showing—
    - (i) whether the claim relates to a dwelling-house; and
    - (ii) if it does, whether the dwelling-house is one to which Part III of the Rent (Northern Ireland) Order, 1978(16), applies;
  - (d) where the action is brought to enforce a right to recover possession of goods, with a statement showing the value of the goods.

[E.r. 2]

#### **Indorsement as to capacity**

3. Before a writ is issued it must be indorsed—
  - (a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues;
  - (b) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued.

[E.r. 3]

#### **Indorsement as to solicitor and address**

- 4.—(1) Before a writ is issued it must be indorsed—
  - (a) where the plaintiff sues by a solicitor, with the plaintiff's address and the solicitor's name or firm and a business address of his within the jurisdiction;
  - (b) where the plaintiff sues in person, with the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent.
- (2) The address for service of a plaintiff shall be—
  - (a) where he sues by a solicitor, the business address of the solicitor indorsed on the writ;

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(16) S.I. 1918 No. 1050 (N.I. 20)



(b) where he sues in person, the address within the jurisdiction indorsed on the writ.

(3) Where a solicitor's name is indorsed on a writ, he must, if any defendant who has been served with or who has entered an appearance to the writ requests him in writing so to do, declare in writing whether the writ was issued by him or with his authority or privity.

(4) If a solicitor whose name is indorsed on a writ declares in writing that the writ was not issued by him or with his authority or privity, the Court may on the application of any defendant who has been served with or who has entered an appearance to the writ, stay all proceedings in the action begun by the writ.

[E.r. 5]

### **Concurrent writ**

5.—(1) One or more concurrent writs may, at the request of the plaintiff, be issued at the time when the original writ is issued or at any time thereafter before the original writ ceases to be valid.

(2) Without prejudice to the generality of paragraph (1) a writ for service within the jurisdiction may be issued as a concurrent writ with one which, or notice of which, is to be served out of the jurisdiction and a writ which, or notice of which, is to be served out of the jurisdiction may be issued as a concurrent writ with one for service within the jurisdiction.

(3) A concurrent writ is a true copy of the original with such differences (if any) as are necessary having regard to the purpose for which the writ is issued.

[E.r. 6]

### **Issue of writ**

6.—(1) No writ which, or notice of which, is to be served out of the jurisdiction shall be issued without the leave of the Court :

Provided that if every claim made by a writ is one which by virtue of a statutory provision the High Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within the jurisdiction, the foregoing provision shall not apply to the writ.

(2) A writ by which proceedings assigned to the Chancery Division are begun must be issued out of the Chancery Office;

(3) Subject to paragraph (2) and to Order 76, rule 2, a writ must be issued out of the Central Office

(4) Issue of a writ takes place upon its being sealed by an officer of the office out of which it is issued.

(5) A concurrent writ must be marked “concurrent” with an official seal and bear the date of issue.

(6) No writ shall be sealed unless at the time of the tender thereof for sealing the person tendering it leaves at the office at which it is tendered a copy thereof signed, where the plaintiff sues in person, by him or, where he does not so sue, by or on behalf of his solicitor.

[E.r. 7]

### **Duration and renewal of writ**

7.—(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for 12 months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

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(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding 12 months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.

(3) Before a writ, the validity of which has been extended under this rule, is served, it must be sealed with a seal showing the period for which the validity of the writ has been so extended.

(4) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served so as to extend the validity of that other writ until the expiration of the period specified in the order.

[E.r. 8]

## ORDER 7

### ORIGINATING SUMMONSES : GENERAL PROVISIONS

#### **Application**

1. The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these Rules or by or under any statutory provision.

[E.r. 1]

#### **Form of summons, etc.**

2.—(1) Every originating summons must be in Form No. 6, 7, 8 or 9 in Appendix A, whichever is appropriate.

(2) The party taking out an originating summons (other than a summons under Order 90 or an ex parte summons) shall be described as a plaintiff, and the other parties shall be described as defendants.

[E.r. 2]

#### **Contents of summons**

3.—(1) Every originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the High Court or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that relief or remedy.

(2) Order 6, rules 3 and 4, shall apply in relation to an originating summons as they apply in relation to a writ.

[E.r. 3]

#### **Concurrent summons**

4. Order 6, rule 5, shall apply in relation to an originating summons as it applies in relation to a writ.

[E.r. 4]

### **Issue of summons**

5. Order 6, rule 6, shall apply in relation to an originating summons as it applies in relation to a writ.

[E.r. 5]

### **Duration and renewal of summons**

6. Order 6, rule 7, shall apply in relation to an originating summons as it applies in relation to a writ.

[E.r. 6]

### **Ex parte originating summons**

7.—(1) Rules 2(1), 3(1) and 5 shall, so far as applicable, apply to ex parte originating summonses; but, save as aforesaid, the foregoing rules of this Order shall not apply to ex parte originating summonses.

(2) Order 6, rule 6(2), (3), (4) and (6) shall, with the necessary modifications, apply in relation to an ex parte originating summons as they apply in relation to a writ.

[E.r. 7]

## **ORDER 8**

### **ORIGINATING AND OTHER MOTIONS : GENERAL PROVISIONS**

#### **Application**

1. The provisions of this Order apply to all motions subject, in the case of originating motions of any particular class, to any special provisions relating to motions of that class made by these Rules or by or under any statutory provision.

[E.r. 1]

#### **Notice of motion**

2.—(1) Except where an application by motion may properly be made ex parte, no motion shall be made without previous notice to the parties affected thereby, but the Court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief may make an order ex parte on such terms as to costs or otherwise, and subject to such undertaking, if any, as it thinks just; and any party affected by such order may apply to the Court to set it aside.

(2) Unless the Court gives leave to the contrary, there must be at least 2 clear days between the service of notice of a motion and the day named in the notice for hearing the motion.

[E.r. 2]

#### **Form and issue of notice of motion**

3.—(1) The notice of an originating motion must be in Form No. 11 in Appendix A and the notice of any other motion in Form No. 27 in that Appendix.

Where leave has been given under rule 2(2) to serve short notice of motion, that fact must be stated in the notice.

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(2) The notice of a motion must include a concise statement of the nature of the claim made or the relief or remedy required.

(3) Order 6, rule 4, shall, with the necessary modifications, apply in relation to notice of an originating motion as it applies in relation to a writ.

(4) An originating motion, by which proceedings assigned to the Chancery Division are begun, must be issued out of the Chancery Office.

(5) Subject to paragraph (2), an originating motion must be issued out of the Central Office.

(6) Issue of every notice of motion takes place upon its being sealed by an officer of the office out of which it is issued.

[E.r. 3]

**Service of notice of motion with writ, etc.**

4. Notice of a motion to be made in an action may be served by the plaintiff on the defendant with the writ of summons or originating summons or at any time after service of such writ or summons, whether or not the defendant has entered an appearance in the action.

[E.r. 4]

**Adjournment of hearing**

5. The hearing of any motion may be adjourned from time to time on such terms, if any, as the Court thinks fit.

[E.r. 5]

**ORDER 9**

**PETITIONS : GENERAL PROVISIONS**

**Application**

1. Rules 2 and 3 apply to petitions by which civil proceedings in the High Court are begun, subject, in the case of petitions of any particular class, to any special provisions relating to petitions of that class made by these Rules or by or under any statutory provision.

[E.r. 1]

**Contents of petition**

2.—(1) Every petition must include a concise statement of the nature of the claim made and the relief or remedy required in the proceedings begun thereby.

(2) Every petition must include at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served, a statement to that effect.

(3) Order 6, rule 4, shall, with the necessary modifications, apply in relation to a petition as it applies in relation to a writ.

[E.r. 2]

**Presentation of petition**

3. Save where otherwise expressly provided by these Rules a petition may be presented by lodging it in the Chancery Office.

[E.r. 3]

**Time of service of petition**

4. Unless the Court otherwise directs, a petition which is required to be served on any person must be served on him not less than 7 days before the day fixed for the hearing of the petition.

[E.r. 4]

**Certain applications not to be made by petition**

5. No application in any cause or matter may be made by petition.

[E.r. 5]

**ORDER 10**

**SERVICE OF ORIGINATING PROCESS : GENERAL PROVISIONS**

**General provisions**

1.—(1) A writ must be served personally on each defendant by the plaintiff.

(2) A writ for service on a defendant within the jurisdiction may instead of being served personally on him be served—

- (a) by sending a copy of the writ by ordinary first-class post to the defendant at his usual or last known address or
- (b) if there is a letter box for that address by inserting through the letter box a copy of the writ enclosed in a sealed envelope addressed to the defendant.

In sub-paragraph (a) 'first-class post' means first-class post which has been pre-paid or in respect of which prepayment is not required.

(3) Where a writ is served in accordance with paragraph (2)—

- (a) the date of service shall unless the contrary is shown be deemed to be the seventh day (ignoring Order 3 rule 2(5)) after the date on which the copy was sent to or as the case may be inserted through the letter box for the address in question;
- (b) any affidavit proving due service of the writ must contain a statement to the effect that—
  - (i) in the opinion of the deponent the copy of the writ if sent to or, as the case may be inserted through the letter box for, the address in question, will have come to the knowledge of the defendant within 7 days thereafter; and
  - (ii) in the case of service by post, the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee.

(4) Where a defendant's solicitor indorses on the writ a statement that he accepts service of the writ on behalf of that defendant, the writ shall be deemed to have been duly served on that defendant and to have been so served on the date on which the indorsement was made.

(5) Where a writ is not duly served on a defendant but he enters an unconditional appearance in the action begun by the writ, the writ shall be deemed to have been duly served on him and to have been so served on the date on which he entered the appearance.

(6) This rule shall have effect subject to the provisions of any statutory provision and these rules and in particular to any statutory provision which provides for the manner in which documents may be served on bodies corporate.

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### **Service of writ on agent of oversea principal**

2.—(1) Where the Court is satisfied on an ex parte application that—

- (a) a contract has been entered into within the jurisdiction with or through an agent who is either an individual residing or carrying on business within the jurisdiction or a body corporate having a registered office or a place of business within the jurisdiction, and
- (b) the principal for whom the agent was acting was at the time the contract was entered into and is at the time of the application neither such an individual nor such a body corporate, and
- (c) at the time of the application either the agent's authority has not been determined or he is still in business relations with his principal;

the Court may authorise service of a writ beginning an action relating to the contract to be effected on the agent instead of the principal.

(2) An order under this rule authorising service of a writ on a defendant's agent must limit a time within which the defendant must enter an appearance.

(3) Where an order is made under this rule authorising service of a writ on a defendant's agent, a copy of the order and of the writ must be sent by post to the defendant at his address out of the jurisdiction.

[E.r. 2]

### **Service of writ in pursuance of contract**

3.—(1) Where—

- (a) a contract contains a term to the effect that the High Court shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the High Court has jurisdiction to hear and determine any such action, and
- (b) the contract provides that, in the event of any action in respect of the contract being begun, the process by which it is begun may be served on the defendant, or on such other person on his behalf as may be specified in the contract, in such manner, or at such place (whether within or out of the jurisdiction), as may be so specified,

then, if an action in respect of the contract is begun in the High Court and the writ by which it is begun is served in accordance with the contract, the writ shall, subject to paragraph (2), be deemed to have been duly served on the defendant.

(2) A writ which is served out of the jurisdiction in accordance with a contract shall not be deemed to have been duly served on the defendant by virtue of paragraph (1) unless leave to serve the writ, or notice thereof, out of the jurisdiction has been granted under Order 11, rule 1 or 2.

[E.r. 3]

### **Service of writ in actions for possession of land**

4.—(1) Where a writ is indorsed with a claim for the possession of land, service of the writ may be effected either by personal service on the defendant at any place in Northern Ireland, or by delivering a copy of such writ at the defendant's residence or place of business to the wife or husband of the defendant, or to some relative of the defendant or of the husband or wife of the defendant or to an employee of the defendant (the person with whom such copy shall be left being apparently over the age of 16 years), and such service as last aforesaid may be effected whether the defendant is in Northern Ireland or not.

(2) Where a writ is indorsed with a claim for the possession of land, the Court may—

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- (a) if satisfied on an ex parte application, that no person appears to be in possession of the land and that service cannot be otherwise effected on any defendant, authorise service on that defendant to be effected by affixing a copy of the writ to some conspicuous part of the land;
- (b) if satisfied on such an application that no person appears to be in possession of the land and that service could not otherwise have been effected on any defendant, order that service already effected by affixing a copy of the writ to some conspicuous part of the land shall be treated as good service on that defendant.

[E.r. 4]

### **Service of originating summons, petition and notice of motion**

5. The foregoing rules of this Order shall apply in relation to an originating summons to which an appearance is required to be entered as they apply in relation to a writ, and rule 1(1), (2), (3) and (4) shall, with any necessary modifications, apply in relation to an originating summons to which no appearance need be entered, a notice of an originating motion and a petition as they apply in relation to a writ.

[E.r. 5]

## **ORDER 11**

### **SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION**

#### **Principal cases in which service of writ out of jurisdiction is permissible**

1.—(1) Subject to rule 3 and provided that the writ does not contain any such claim as is mentioned in Order 75, rule 2(1)(a), service of a writ, or notice of a writ, out of the jurisdiction is permissible with the leave of the Court in the following cases, that is to say—

- (a) if the whole subject-matter of the action begun by the writ is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;
- (b) if an act, deed, will, contract, obligation or liability affecting land situate within the jurisdiction is sought to be construed, rectified, set aside or enforced in the action begun by the writ;
- (c) if in the action begun by the writ relief is sought against a person domiciled or ordinarily resident within the jurisdiction;
- (d) if the action begun by the writ is for the administration of the estate of a person who died domiciled within the jurisdiction or if the action begun by the writ is for any relief or remedy which might be obtained in any such action as aforesaid;
- (e) if the action begun by the writ is for the execution, as to property situate within the jurisdiction, of the trusts of a written instrument, being trusts that ought to be executed according to the law of Northern Ireland and of which the person to be served with the writ is a trustee or if the action begun by the writ is for any relief or remedy which might be obtained in any such action as aforesaid;
- (f) if the action begun by the writ is brought against a defendant not domiciled or ordinarily resident in Scotland to enforce, rescind, dissolve, annul or otherwise affect a contract or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which—
  - (i) was made within the jurisdiction, or

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- (ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction, or
- (iii) is by its terms, or by implication, governed by the law of Northern Ireland,
- (g) if the action begun by the writ is brought against a defendant not domiciled or ordinarily resident in England and Wales or Scotland in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;
- (h) if the action begun by the writ is founded on a tort committed within the jurisdiction;
- (i) if in the action begun by the writ an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing),
- (j) if the action begun by the writ being properly brought against a person duly served within the jurisdiction, a person out of the jurisdiction is a necessary or proper party thereto;
- (k) if the action begun by the writ is either by a mortgage of property situate within the jurisdiction (other than land) and seeks the sale of the property, the foreclosure of the mortgage or delivery by the mortgagor of possession of the property but not an order for payment of any moneys due under the mortgage or by a mortgagor of property so situate (other than land) and seeks redemption of the mortgage, reconveyance of the property or delivery by the mortgagee, of possession of the property but not a personal judgment;
- (l) if the action begun by the writ is brought under the Carriage by Air Act 1961<sup>(17)</sup>, the Carriage by Air (Supplementary Provisions) Act 1962<sup>(18)</sup>, the Carriage of Goods by Road Act 1965<sup>(19)</sup>, the Nuclear Installations Act 1965<sup>(20)</sup> or the Protection of Trading Interests Act 1980<sup>(21)</sup>;
- (m) action begun by the writ is a probate action within the meaning of Order 76;
- (n) if the action brought by the writ is brought to enforce a claim in respect of a liability incurred under the Merchant Shipping (Oil Pollution) Act 1971<sup>(22)</sup>;
- (o) if the action begun by the writ is brought against a defendant not domiciled or ordinarily resident in England and Wales or Scotland in respect of a claim by the Commissioners of Inland Revenue for estate duty or capital transfer tax;
- (p) if the action begun by the writ is one in which a claim is made for a sum to which the directive of the Council of the European Communities dated 15th March 1976 No. [76/308/EEC](#) applies, and service is to be effected in a country which is a member state of the European Economic Community.

In this paragraph “mortgage” includes a charge or lien, “mortgagee” means a person entitled to, or interested in, a mortgage and “mortgagor” means a person entitled to, or interested in property subject to a mortgage.

(2) Service of a writ in England and Wales, Scotland, the Isle of Man or the Channel Islands and service of notice of a writ in any other place out of the jurisdiction, is permissible without the leave of the Court if every claim made in the action begun by the writ is one which by virtue of a statutory provision the High Court has power to hear and determine notwithstanding that the person against

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(17) 1961 c. 27  
(18) 1962 c. 43  
(19) 1965 c. 37  
(20) 1965 c. 57  
(21) 1980 c. 11  
(22) 1971 c. 59



whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction.

(3) Where a writ or notice of a writ is to be served out of the jurisdiction under paragraph (2), the time to be inserted in the writ or notice within which the defendant served therewith must enter an appearance shall be limited in accordance with the practice adopted under rule 4(4).

[E.r. 1]

#### **Service out of jurisdiction in certain actions of contract**

2. Where it appears to the Court that a contract contains a term to the effect that the High Court shall have jurisdiction to hear and determine any action in respect of the contract, the Court may, subject to rule 3, grant leave for service out of the jurisdiction of the writ, or notice of the writ, by which an action in respect of the contract is begun.

[E.r. 2]

#### **Leave for service of notice of writ**

3.—(1) Unless service is to be effected in England and Wales, Scotland, the Isle of Man or the Channel Islands, leave granted under rule 1 or 2 shall be leave for service out of the jurisdiction of notice of the writ and not the writ.

(2) Notice of a writ for service out of the jurisdiction must be in Form No. 5 in Appendix A.

[E.r. 3]

#### **Application for, and grant of, leave to serve writ out of jurisdiction**

4.—(1) An application for the grant of leave under rule 1 or 2 must be supported by an affidavit stating the grounds on which the application is made and that, it) the deponent's belief, the plaintiff has a good cause of action, and showing in what place or country the defendant is, or probably may be found.

(2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.

(3) Where the application is for the grant of leave under rule 1 to serve a writ in England and Wales or Scotland, if it appears to the Court that there may be a concurrent remedy there, the Court, in deciding whether to grant leave, shall have regard to the comparative cost and convenience of proceeding there or in Northern Ireland, and (where that is relevant) to the powers and jurisdiction of the county courts in England and Wales or of the sheriff's or small debts courts in Scotland.

(4) An order granting under rule 1 or 2 leave to serve a writ, or notice of a writ, out of the jurisdiction must limit a time within which the defendant to be served must enter an appearance.

[E.r. 4]

#### **Service of writ or notice of writ abroad: general**

5.—(1) Subject to the following provisions of this rule, Order 10 rule 1(1), (4) and (S) and Order 65 rule 4, shall apply in relation to the service of a writ, or notice of a writ, notwithstanding that the writ or notice is to be served out of the jurisdiction.

(2) Nothing in this rule or in any order or direction of the Court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.

(3) A writ, or notice of a writ, which is to be served out of the jurisdiction—

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- (a) need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected; and
  - (b) need not be served by the plaintiff or his agent if it is served by a method provided for by rule 6 or rule 7.
- (4) An official certificate stating that a notice of a writ as regards which rule 6 has been complied with, has been served on a person personally, or in accordance with the law of the country in which service was effected, on a specified date, being a certificate—
- (a) by a British consular authority in that country, or
  - (b) by the government or judicial authorities of that country, or
  - (c) by any other authority designated in respect of that country under the Hague Convention,
- shall be evidence of the facts so stated.
- (5) An official certificate by the Secretary of State stating that notice of a writ has been duly served on a specified date in accordance with a request made under rule 7 shall be evidence of that fact.
- (6) A document purporting to be such a certificate as is mentioned in paragraph (5) or (6) shall, until the contrary is proved, be deemed to be such a certificate.
- (7) In this rule and rule 6 “the Hague Convention” means the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at The Hague on 15th November 1965.

[E.r. 5]

#### **Service of notice of writ abroad through foreign governments, judicial authorities and British consuls**

- 6.—(1) This rule does not apply to service in—
- (a) England and Wales, Scotland, the Isle of Man or the Channel Islands;
  - (b) any independent Commonwealth country;
  - (c) any colony or protectorate;
  - (d) the Republic of Ireland.
- (2) Where in accordance with these Rules notice of a writ is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention (other than the Hague Convention) providing for service in that country of process of the High Court, the notice may be served—
- (a) through the judicial authorities of that country; or
  - (b) through a British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served).
- (3) Where in accordance with these Rules, notice of a writ is to be served on a defendant in any country which is a party to the Hague Convention, the notice may be served—
- (a) through the authority designated under the Convention in respect of that country; or
  - (b) if the law of that country permits—
    - (i) through the judicial authorities of that country, or
    - (ii) through a British consular authority in that country.
- (4) Where in accordance with these Rules notice of a writ is to be served on a defendant in any country with respect to which there does not subsist a Civil Procedure Convention providing for service in that country of process of the High Court, the notice may be served—

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- (a) through the government of that country, where that government is willing to effect service; or
- (b) through a British consular authority in that country, except where service through such an authority is contrary to the law of that country.

(5) A person who wishes to serve notice of a writ by a method specified in paragraph (2), (3) or (4) must lodge in the Central Office a request for service of notice of the writ by that method, together with a copy of the notice and an additional copy thereof for each person to be served.

(6) Every copy of a notice lodged under paragraph (5) must be accompanied by a translation of the notice in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected.

Provided that this paragraph shall not apply in relation to a copy of a notice which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a British consular authority on a British subject, unless the service is to be effected under paragraph (2) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.

(7) Every translation lodged under paragraph (6) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.

(8) Documents duly lodged under paragraph (5) shall be sent by the Master (Queen's Bench and Appeals) to the Parliamentary Under-Secretary of State to the Foreign Office with a request that he arrange for notice of the writ to be served by the method indicated in the request lodged under paragraph (5), or, where alternative methods are so indicated, by such one of those methods as is most convenient.

[E.r. 6]

### **Service of notice of writ in certain actions under certain Acts**

7.—(1) Where a person to whom leave has been granted under rule 1 to serve notice of a writ on a High Contracting Party to the convention set out in Schedule I to the Carriage by Air Act 1961, the Schedule to the Carriage by Air (Supplementary Provisions) Act 1962 or the Schedule to the Carriage of Goods by Road Act 1965, being a writ beginning an action to enforce a claim in respect of carriage undertaken by that Party, wishes to have the notice served on that Party, he must lodge in the Central Office—

- (a) a request for service to be arranged by the Secretary of State; and
- (b) a copy of the notice; and
- (c) except where the official language of the High Contracting Party is, or the official languages of that Party include, English, a translation of the notice in the official language or one of the official languages of the High Contracting Party.

(2) Where a person to whom leave has been granted under rule 1 to serve notice of a writ on the government of a country outside the United Kingdom, being a writ beginning an action to enforce a claim by virtue of section 10 of the Nuclear Installations Act 1965, wishes to have the notice served on that government, he must lodge in the Central Office the documents mentioned in sub-paragraphs (a), (b) and (c) of paragraph (1), and those sub-paragraphs shall apply accordingly with the substitution for references to the High Contracting Party of references to the country in question.

(3) Rule 6(7) shall apply in relation to a translation lodged under paragraphs (1) or (2) of this rule as it applies in relation to a translation lodged under paragraph (6) of that rule.

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(4) Documents duly lodged under this rule shall be sent by the Master (Queen's Bench and Appeals) to the Secretary of State with a request that the Secretary of State arrange for the notice to be served on the High Contracting Party or the government in question, as the case may be.

[E.r. 7]

#### **Undertaking to pay expenses of service by Secretary of State**

8. Every request lodged under rule 6(5) or rule 7 must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Secretary of State in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Finance Officer of the office of the Secretary of State and to produce a receipt for the payment to the proper officer of the High Court.

[E.r. 8]

#### **Service of originating summons, petition, notice of motion, etc.**

9.—(1) Subject to paragraph (2) and to Order 73, rule 5, service out of the jurisdiction of an originating summons is permissible with the leave of the Court.

(2) Where the proceedings begun by an originating summons might have been begun by writ, service out of the jurisdiction of the originating summons is permissible as aforesaid if, but only if, service of the writ, or notice of the writ, out of the jurisdiction would be permissible had the proceedings been begun by writ.

(3) Where any proceedings are authorised by these Rules or (apart from these Rules) by or under any statutory provision to be begun by originating motion or petition, service out of the jurisdiction of the notice of motion or of the petition is permissible with the leave of the Court.

(4) Subject to Order 73, rule 5, service out of the jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court.

(5) Rule 4(1), (2) and (3) shall, so far as applicable, apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1 or 2.

(6) An order granting under this rule leave to serve out of the jurisdiction an originating summons to which an appearance is required to be entered must limit a time within which the defendant to be served with the summons must enter an appearance.

(7) Rules 5, 6 and 8 shall apply in relation to any document for the service of which out of the jurisdiction leave has been granted under this rule as they apply in relation to notice of a writ.

[E.r. 9]

## **ORDER 12**

### **ENTRY OF APPEARANCE TO WRIT OR ORIGINATING SUMMONS**

#### **Mode of entering appearance**

1.—(1) Subject to paragraph (2) and to Order 80, rule 2, a defendant to an action begun by writ may (whether or not he is sued as a trustee or personal representative or in any other representative capacity) enter an appearance in the action and defend it by a solicitor or in person.

(2) Except as expressly provided by any statutory provision, a defendant to such an action who is a body corporate may not enter an appearance in the action or defend it otherwise than by a solicitor.

(3) An appearance is entered by properly completing the requisite documents, that is to say, a memorandum of appearance, as defined by rule 3, two copies thereof, and handing them in at, or sending them by post to, the appropriate office.

(4) If two or more defendants to an action enter an appearance by the same solicitor and at the same time, only one set of the requisite documents need be completed and delivered for those defendants.

[E.r. 1]

### **Place for entering appearance**

2. An appearance must be entered in the appropriate office.

[E.r. 2]

### **Memorandum of appearance**

3.—(1) A memorandum of appearance is a request to the appropriate office to enter an appearance for the defendant or defendants specified in the memorandum.

(2) A memorandum of appearance must be in Form No. 12 in Appendix A and the memorandum of appearance and copies thereof required for entering an appearance must be signed by the solicitor by whom the defendant appears or, if the defendant appears in person, by the defendant.

(3) A memorandum of appearance must specify—

- (a) in the case of a defendant appearing in person, the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent; and
- (b) in the case of a defendant appearing by a solicitor, a business address of his solicitor's within the jurisdiction,

and where the defendant enters an appearance in person, the address within the jurisdiction specified under sub-paragraph (a) shall be his, address for service, but otherwise his solicitor's business address shall be his address for service.

(4) If the Court is satisfied on application by the plaintiff that any address specified in the memorandum of appearance is not genuine, the Court may set aside the appearance.

[E.r. 3]

### **Procedure on receipt of requisite documents**

4.—(1) On receiving the requisite documents an officer of the appropriate office must in all cases affix to the memorandum of appearance, and 2 copies thereof, an official stamp showing the date on which he received those documents, enter the appearance in the cause book, file the original memorandum and—

- (a) if the requisite documents were handed in at the office, hand back 2 copies of the memorandum, and
- (b) if they were sent by post, send 1 copy by post to the plaintiff, or as the case may be, his solicitor at the plaintiff's address for service and also send by post to the defendant or, as the case may be, his solicitor at the defendant's address for service the other copy of the memorandum.

(2) Where the defendant enters an appearance by handing in the requisite documents at the office, he must on the date on which he enters the appearance send by post to the plaintiff, if the plaintiff

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sues in person, but otherwise to the plaintiff's solicitor, at the plaintiff's address for service, one of the copies of the memorandum of appearance, handed back to him under paragraph (1).

[E.r. 4]

#### **Time limited for appearing**

5. Reference in these Rules to the time limited for appearing are references—
- (a) in the case of a writ served within the jurisdiction, to 14 days after service of the writ (including the day of service) or, where that time has been extended by or by virtue of these Rules, to that time as so extended; and
  - (b) in the case of a writ, or notice of a writ, served out of the jurisdiction, to the time limited under Order 10, rule 2(2), Order 11, rule 1(3), or Order 11, rule 4(4), or, where that time has been extended as aforesaid, to that time as so extended.

[E.r. 5]

#### **Late appearance**

6.—(1) A defendant may not enter an appearance in an action after judgment has been entered therein except with the leave of the Court.

(2) Except as provided by paragraph (1), nothing in these Rules or any writ or order thereunder shall be construed as precluding a defendant from entering an appearance in an action after the time limited for appearing, but if a defendant enters an appearance after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other thing later than if he had appeared within that time.

[E.r. 6]

#### **Conditional appearance**

7.—(1) A defendant to an action may with the leave of the Court enter a conditional appearance in the action.

(2) A conditional appearance, except by a person sued as a partner of a firm in the name of that firm and served as a partner, is to be treated for all purposes as an unconditional appearance unless the Court otherwise orders or the defendant applies to the Court, within the time limited for the purpose, for an order under rule 8, and the Court makes an order thereunder.

[E.r. 7]

#### **Application to set aside writ, etc.**

8. A defendant to an action may at any time before entering an appearance therein, or, if he has entered a conditional appearance, within 14 days after entering the appearance, apply by summons or motion for an order setting aside the writ or service of the writ, or notice of the writ, on him, or declaring that the writ or notice has not been duly served on him or discharging any order giving leave to serve the writ or notice on him out of the jurisdiction.

[E.r. 8]

#### **Appearance to originating summons**

9.—(1) Subject to paragraph (2), an appearance must be entered to every originating summons (other than an ex parte originating summons) by each defendant named in and served with the summons.

(2) No appearance need be entered to an originating summons in any case or class of case in relation to which special provision to that effect is made by these Rules or by or under any statutory provision.

(3) Subject to the foregoing provisions of this rule, the foregoing rules of this Order shall apply in relation to an originating summons to which an appearance is required to be entered as they apply in relation to a writ except that for the reference in rule S(b) to Order 11, rules 1(3) and 4(4), there shall be substituted a reference to Order 11, rule 9(6).

[E.r. 9]

## ORDER 13

### DEFAULT OF APPEARANCE TO WRIT

#### **Claim for liquidated demand**

1.—(1) Where a writ is indorsed with a claim against a defendant for a liquidated demand only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.

(2) A claim shall not be prevented from being treated for the purposes of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest accruing after the date of the writ, at an unspecified rate, but any such interest shall be computed from the date of the writ to the date of entering judgment at the rate of 5 per cent.

(3) Before final judgment is entered under this rule an affidavit must be filed specifying the amount then actually due to the plaintiff.

[E.r. 1]

#### **Claim for unliquidated damages**

2. Where a writ is indorsed with a claim against a defendant for unliquidated damages only, then; if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

[E.r. 2]

#### **Claim for detention of goods**

3.—(1) Where a writ is indorsed with a claim against a defendant relating to the detention of goods only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing and subject to Order 42, rule 6—

(a) at his option enter either—

(i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs, or

(ii) interlocutory judgment for the value of the goods to be assessed and costs, or

(b) apply by summons for judgment against that defendant for delivery of the goods without giving, him the alternative of paying their assessed value,

and in, any case proceed with the action against the other defendants, if any.

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(2) A summons under paragraph (1)(b) must be supported by affidavit and notwithstanding Order 65, rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

[E.r. 3]

### **Claim for possession of land**

4.—(1) Where a writ is indorsed with a claim against a defendant for possession of land only, then, subject to paragraphs (2), (3) and (4), if that defendant fails to enter an appearance the plaintiff may, after the time limited for appearing, and on producing a certificate by his solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 88 rule 1, enter judgment for possession of the land as against that defendant and costs, and proceed with the action against the other defendants, if any.

(2) The plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under this rule unless he produces a certificate by his solicitor, or (if he sues in person) an affidavit, stating that the claim does not relate to a dwelling-house.

(3) The plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under this rule where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent unless he produces a certificate by his solicitor, or (if he sues in person) an affidavit, stating that the land does not comprise or include a holding agricultural or pastoral or partly agricultural and partly pastoral.

(4) The plaintiff shall not be entitled to enter judgment under this rule where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent unless he files an affidavit made by the landlord, his agent, receiver or clerk, stating that there was at the date of issue of the writ at least one year's rent due over and above all just and fair allowances.

(5) An application for leave to enter judgment under paragraph (2) or (3) shall be by summons stating the grounds of the application, and the summons must, unless the Court otherwise orders and notwithstanding anything in Order 65, rule 9, be served on the defendant against whom it is sought to enter judgment.

(6) If the Court refuses leave to enter judgment, it may make or give any such order or directions as it might have made or given had the application been an application for judgment under Order 14, rule 1.

(7) Where there is more than one defendant, any judgment entered under this rule shall contain a stay of enforcement against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

(8) Where the plaintiff is a superior landlord and he applies under paragraph (3) for leave to enter judgment against a defendant who is an immediate landlord the Court may, having regard to the provisions of section 12 of the Land Law (Ireland) Act 1896(23):—

- (a) give such directions as to notice to tenants and otherwise and grant leave subject to such limitations as to enforcement of the judgment and such provisions as to costs as it thinks just:
- (b) on proof by affidavit that the non-payment of rent by the defendant is due to the non-payment of rent by the tenant of the holding, issue a certificate to that effect.

[E.r. 4]



### **Mixed claims**

5. Where a writ issued against any defendant is indorsed with two or more of the claims mentioned in the foregoing rules, and no other claim, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim indorsed on the writ, and proceed with the action against the other defendants, if any.

[E.r. 5]

### **Other claims**

6.—(1) Where a writ is indorsed with a claim of a description not mentioned in rules 1 to 4, then, if any defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing and upon filing an affidavit proving due service of the writ on that defendant and, where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, proceed with the action as if that defendant had entered an appearance.

(2) Where a writ issued against a defendant is indorsed as aforesaid, but by reason of the defendant's satisfying the claim or complying with the demands thereof or any other like reason it has become unnecessary for the plaintiff to proceed with the action, then, if the defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter judgment with the leave of the Court against that defendant for costs.

(3) An application for leave to enter judgment under paragraph (2) shall be by summons which must, unless the Court otherwise orders, and notwithstanding anything in Order 65, rule 9 be served on the defendant against whom it is sought to enter judgment.

[E.r. 6]

### **Proof of service of writ**

7.—(1) Judgment shall not be entered against a defendant under this Order unless—

- (a) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ or notice of the writ on the defendant; or
- (b) the plaintiff produces the writ indorsed by the defendant's solicitor with a statement that he accepts service of the writ on the defendant's behalf.

(2) Where, in an action begun by a writ, an application is made to the Court for an order affecting a party who has failed to enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

(3) Where, after judgment has been entered under this Order against a defendant purporting to have been served by post under Order 10, rule 1(2)(a), the copy of the writ sent to the defendant is returned to the plaintiff through the post undelivered to the addressee, the plaintiff shall, before taking any step or further step in the action or the enforcement of the judgment, either—

- (a) make a request for the judgment to be set aside on the ground that the writ has not been duly served, or
- (b) apply to the Court for directions.

(4) A request under paragraph (3)(a) shall be made by producing to an officer of the office in which the judgment was entered, and leaving with him for filing, an affidavit stating the relevant facts, and thereupon the judgment shall be set aside and the entry of the judgment and of any proceedings for its enforcement made in the book kept in the office for that purpose shall be marked accordingly.

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(5) An application under paragraph (3)(b) shall be made ex parte by affidavit stating the facts on which the application is founded and any order or direction sought, and on, the application the Court may—

- (a) set aside the judgment; or
- (b) direct that, notwithstanding the return of the copy of the writ, it shall be treated as having been duly served, or
- (c) make such other order and give such other direction as the circumstances may require.

[E.r. 7]

### **Setting aside judgment**

8. Without prejudice to rule 7(3) and (4), the Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

[E.r. 9]

## **ORDER 14**

### **SUMMARY JUDGMENT**

#### **Application by plaintiff for summary judgment**

1.—(1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

(2) Subject to paragraph (3), this rule applies to every action begun by writ in the Queen's Bench Division or the Chancery Division other than—

- (a) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment,
  - (b) an action which includes a claim by the plaintiff based on an allegation of fraud, or
  - (c) an Admiralty action in rem.
- (3) This Order shall not apply to an action to which Order 86 applies.

[E.r. 1]

#### **Manner in which application under rule 1 must be made**

2.—(1) An application under rule 1 must be made by summons supported by an affidavit verifying the facts on which the claim, or the part of a claim, to which the application relates is, based and, stating that in the deponent's belief there is no defence to that claim or part, as the case may be, or no defence except as to the amount of any damages claimed.

(2) Where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent the affidavit filed under paragraph (1) must state whether or not the land comprises or includes a holding agricultural or pastoral or partly agricultural and partly pastoral.

(3) Unless the Court otherwise directs, an affidavit for the purpose of this rule may contain, statements of information or belief with the sources and grounds thereof.

(4) The summons, a copy of the affidavit in support and of any exhibits referred to therein must be served on the defendant not less than 10 clear days before the return day.

[E.r. 2]

### **Judgment for plaintiff**

3.—(1) Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court with respect to the claim, or the part of a claim, to which the application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part, the Court may give such judgment for the plaintiff against that defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed.

(2) The Court may by order, and subject to such conditions, if any, as may be just, stay enforcement of any judgment given against a defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action.

(3) Where the plaintiff is a superior landlord and he applies under rule 1 for judgment for possession of land for non-payment of the rent of land which comprises or includes a holding agricultural or pastoral or partly agricultural and partly pastoral, the Court may, having regard to the provisions of section 12 of the Land Law (Ireland) Act 1896(24),—

- (a) give such directions as to notice to tenants and otherwise and give judgment subject to such limitations as to enforcement of the judgment and such provisions as to costs as it thinks just;
- (b) on proof by affidavit that the non-payment of rent by the defendant is due to the non-payment of rent by the tenant of the holding, issue a certificate to that effect.

[E.r. 3]

### **Leave to defend**

4.—(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.

(2) Rule 2(3) applies for the purposes of this rule as it applies for the purposes of that rule.

(3) The Court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim, to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial (in cases which under the Act may be tried without a jury) or otherwise as it thinks fit.

(4) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity—

- (a) to produce any document;
- (b) if it appears to the Court that, there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

[E.r. 4]

### **Application for summary judgment on counterclaim**

5.—(1) Where a defendant to an action in the Queen's Bench Division or Chancery Division begun by writ has served a counterclaim on the plaintiff, then, subject to paragraph (3), the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim, or to a particular part of such a claim, apply to the Court for judgment against the plaintiff on that claim or part.

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(24) 1896 c. 47

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(2) Rules 2, 3 and 4 shall apply in relation to an application under this rule as they apply in relation to an application under rule 1 but with the following modifications, that is to say—

- (a) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;
- (b) the words in rule 3(2) “any counterclaim made or raised by the defendant in” shall be omitted; and
- (c) the reference in rule 4(3) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.

(3) This rule shall not apply to a counterclaim which includes any such claim as is referred to in rule 1(2).

[E.r. 5]

### **Directions**

6.—(1) Where the Court—

- (a) orders that a defendant or a plaintiff have leave (whether conditional or unconditional) to defend an action or counterclaim, as the case may be, with respect to a claim or a part of a claim, or
- (b) gives judgment for a plaintiff or a defendant on a claim or part of a claim but also orders that enforcement of the judgment be stayed pending the trial of a counterclaim or of the action, as the case may be,

the Court shall give directions as to the further conduct of the action.

(2) In particular, and if the parties consent, the Court may direct that the claim in question and any other claim in the action be tried by a master under the provisions of these Rules relating to the trial of causes or matters or questions or issues by masters.

[E.r. 6]

### **Costs**

7.—(1) If the plaintiff makes an application under rule 1 where the case is not within this Order or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 62, and, in particular, to rule 4(1) thereof, the Court may dismiss the application with costs and may, if the plaintiff is not an assisted person, require the costs to be paid by him forthwith.

(2) The Court shall have the same power to dismiss an application under rule 5 as it has under paragraph (1) to dismiss an application under rule 1, and that paragraph shall apply accordingly with the necessary modifications.

[E.r. 7]

### **Right to proceed with residue of action or counterclaim**

8.—(1) Where on an application under rule 1 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action as respects any other claim or as respects the remainder of the claim or against any other defendant.

(2) Where on an application under rule 5 a defendant obtains judgment on a claim or part of a claim made in a counterclaim against the plaintiff, he may proceed with the counterclaim as respects any other claim or as respects the remainder of the claim or against any other defendant to the counterclaim.

[E.r. 8]

### **Judgment for delivery up of chattel**

9. Where the claim to which an application under rule 1 or rule 5 relates is for the delivery up of a specific chattel and the Court gives judgment under this Order for the applicant, it shall have the same power to order the party against whom judgment is given to deliver up the chattel without giving him an option to retain it on paying the assessed value thereof as if the judgment had been given after trial.

[E.r. 9]

### **Relief against forfeiture**

10. A tenant shall have the same right to apply for relief after judgment for possession of land on the ground of forfeiture for non-payment of rent has been given under this Order as if the judgment had been given after trial.

[E.r. 10]

### **Setting aside judgment**

11. Any judgment given against a party who does not appear at the hearing of an application under rule 1 or rule 5 may be set aside or varied by the Court on such terms as it thinks just.

[E.r. 11]

## **ORDER 15**

### **CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES**

#### **Joinder of causes of action**

1.—(1) Subject to rule 5(1), a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action—

- (a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action, or
- (b) if the plaintiff claims or the defendant is alleged to be liable in the capacity of executor or administrator of an estate in respect of one or more of the causes of action and in his personal capacity but with reference to the same estate in respect of all the others, or
- (c) with the leave of the Court.

(2) An application for leave under this rule must be made ex parte by affidavit before the issue of the writ or originating summons, as the case may be, and the affidavit must state the grounds of the application.

[E.r. 1]

#### **Counterclaim against plaintiff**

2.—(1) Subject to rule 5(2), a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter; and where he does so he must add the counterclaim to his defence.

(2) Rule 1 shall apply in relation to a counterclaim as if the counterclaim were a separate action and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

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(3) A counterclaim may be proceeded with notwithstanding that judgment is given for the plaintiff in the action or that the action is stayed, discontinued or dismissed.

(4) Where a defendant establishes a counterclaim against the claim of the plaintiff and there is a balance in favour of one of the parties, the Court may give judgment for the balance, so, however, that this provision shall not be taken as affecting the Court's discretion with respect to costs.

[E.r. 2]

### **Counterclaim against additional parties**

3.—(1) Where a defendant to an action who makes a counterclaim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along with the plaintiff in respect of the subject-matter of the counterclaim; or claims against such other person any relief relating to or connected with the original subject-matter of the action, then, subject to rule 5(2), he may join that other person as a party against whom the counterclaim is made.

(2) Where a defendant joins a person as a party against whom he makes a counterclaim, he must add that person's name to the title of the action and serve on him a copy of the counterclaim; and a person on whom a copy of a counterclaim is served under this paragraph shall, if he is not already a party to the action, become a party to it as from the time of service with the same rights in respect of his defence to the counterclaim and otherwise as if he had been duly sued in the ordinary way by the party making the counterclaim.

(3) A defendant who is required by paragraph (2) to serve a copy of the counterclaim made by him on any person who before service is already a party to the action must do so within the period within which, by virtue of Order 18, rule 2, he must serve on the plaintiff the defence to which the counterclaim is added.

(4) An appearance to a counterclaim by a person who is not already a party to the action must be entered in the appropriate office. A memorandum of appearance to a counterclaim shall be in Form No. 15 in Appendix A.

(5) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on a person who is not already a party to the action, the following provisions of these Rules, namely, Order 10, Order 11 (except rule 3), Orders 12 and 13 and Order 75, rule 4, shall, subject to the last foregoing paragraph, apply in relation to the counterclaim and the proceedings arising from it as if—

- (a) the counterclaim were a writ and the proceedings arising from it an action; and
- (b) the party making the counterclaim were a plaintiff and the party against whom it is made a defendant in that action.

(6) A copy of a counterclaim required to be served on a person who is not already a party to the action must be indorsed with a notice, in Form No. 14 in Appendix A, addressed to that person—

- (a) stating the effect of Order 12, rule 1, as applied by paragraph (5),
- (b) specifying the appropriate office for the entry of appearance by that person to the counterclaim, and
- (c) stating that he may obtain forms of the requisite documents from the appropriate office and explaining how he may do so.

[E.r. 3]

### **Joinder of parties**

4.—(1) Subject to rule 5(1), two or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where—

- (a) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions, and
- (b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transactions or series of transactions.

(2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any statutory provision and unless the Court gives leave to the contrary, be parties to the action and any of them who does not consent to being joined as a plaintiff must, subject to any order made by the Court on an application for leave under this paragraph, be made a defendant.

This paragraph shall not apply to a probate action.

[E.r. 4]

### **Court may order separate trials, etc.**

5.—(1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if two or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of the causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

(2) If it appears on the application of any party against whom a counterclaim is made that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

[E.r. 5]

### **Misjoinder and nonjoinder of parties**

6.—(1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder or any party; and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the person's who are parties to the cause or matter.

(2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application—

- (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
- (b) order any of the following persons to be added as a party, namely—
  - (i) any person who ought to, have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
  - (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter,

but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.

(3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter.

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[E.r. 6]

**Change of parties by reason of death, etc.**

7.—(1) Where a party to an action dies or becomes bankrupt but the cause of action survives, the action shall not abate by reason of the death or bankruptcy.

(2) Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first mentioned party.

An application for an order under this paragraph may be made *ex parte*.

(3) An order may be made under this rule for a person to be made a party to a cause or matter notwithstanding that he is already a party to it on the other side of the record, or on the same side but in a different capacity; but—

- (a) if he is already a party on the other side, the order shall be treated as containing a direction that he shall cease to be a party on that other side, and
- (b) if he is already a party on the same side but in another capacity, the order may contain a direction that he shall cease to be a party in that other capacity.

(4) The person on whose application an order is made under this rule must procure the order to be noted in the cause book, and after the order has been so noted that person must, unless the Court otherwise directs, serve the order on every other person who is a party to the cause or matter or who becomes or ceases to be a party by virtue of the order and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun.

(5) Any application to the Court by a person served with an order made *ex parte* under this rule for the discharge or variation of the order must be made within 14 days after the service of the order on that person.

[E.r. 7]

**Provisions consequential on making of order under rule 6 or 7**

8.—(1) Where an order is made under rule 6, the writ by which the action in question was begun must be amended accordingly and must be endorsed with—

- (a) a reference to the order in pursuance of which the amendment is made, and
- (b) the date on which the amendment is made,

and the amendment must be made within such period as may be specified in the order or, if no period is so specified, within 14 days after the making of the order.

(2) Where by an order under rule 6 a person is to be made a defendant, the rules as to service of a writ of summons shall apply accordingly to service of the amended writ on him, but before serving the writ on him the person on whose application the order was made must procure the order to be noted in the cause book.

(3) Where by an order under rule 6 or 7 a person is to be made a defendant, the rules as to entry of appearance shall apply accordingly to entry of appearance by him, subject, in the case of a person to be made a defendant by an order under rule 7, to the modification that the time limited for appearing shall begin with the date on which the order is served on him under rule 7(4) or, if the order is not required to be served on him, with the date on which the order is noted in the cause book.



(4) Where by an order under rule 6 or 7 a person is to be added as a party or is to be made a party in substitution for some other party, that person shall not become a party until—

(a) where the order is made under rule 6, the writ has been amended in relation to him under this rule and (if he is a defendant) has been served on him, or

(b) where the order is made under rule 7, the order has been served, on him under rule 7(4) or, if the order is not required to be served on him, the order has been noted in the cause book,

and where by virtue of the foregoing provisions a person becomes a party in substitution for some other party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the old, except that entry of appearance by the old party shall not dispense with entry of appearance by the new.

(5) The foregoing provisions of this rule shall apply in relation to an action begun by originating summons as they apply in relation to an action begun by writ.

[E.r. 8]

#### **Failure to proceed after death of party**

9.—(1) If after the death, of a plaintiff or defendant in any action the cause of action survives; but no order under rule 7 is made substituting as plaintiff any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court for an order that unless the action is proceeded with within such time as may be specified in the order the action shall be struck out as against the plaintiff or defendant, as the case may be, who has died; but where it is the plaintiff who has died, the Court shall not make an order under this rule unless satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased plaintiff and to any other interested person who, in the opinion of the Court, should be notified.

(2) Where in any, action a counterclaim is made by a defendant, this rule shall apply in relation to the counterclaim as if the counterclaim were a separate action and as if the defendant making the counterclaim were the plaintiff and the person against whom it is made a defendant.

[E.r. 9]

#### **Actions for possession of land**

10.—(1) Without prejudice to rule 6, the Court may at any stage of the proceedings in an action for possession of land order any person not a party to the action who is in possession of the land (whether in actual possession or by a tenant) to be added as a defendant.

(2) An application by any person for an order under this rule may be made ex parte, supported by an affidavit showing that he is in possession of the land in question and if by a tenant, naming him.

(3) A person added as a defendant by an order under this rule must serve a copy of the order on the plaintiff and must enter an appearance in the action within such period, if any, as may be specified in the order or, if no period is so specified, within 7 days after the making of the order, and the rules as to entry of appearance shall apply accordingly to entry of appearance by him.

[E.r. 10]

#### **Relator actions**

11. Before the name of any person is used in any action as a relator, that person must give a written authorisation so to use his name to his solicitor and the authorisation must be filed in the office out of which it is intended to issue the proceedings.

[E.r. 11]

### **Representative proceedings**

12.—(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13, the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

(2) At any stage of proceedings under this rule the Court may, on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint one or more of the defendants or other persons as representing whom the defendants are sued to represent all, or all except one or more, of those persons in the proceedings; and where, in exercise of the power conferred by this paragraph, the Court appoints a person not named as a defendant, it shall make an order under rule 6 adding that person as a defendant.

(3) A judgment or order given in proceedings under this rule shall be binding on all the persons as representing whom the plaintiffs sue or, as the case may be, the defendants are sued, but shall not be enforced against any person not a party to the proceedings except with the leave of the Court.

(4) An application for the grant of leave under paragraph (3) must be made by summons which must be served personally on the person against whom it is sought to enforce the judgment or order.

(5) Notwithstanding that a judgment or order to which any such application relates is binding on the person against whom the application is made, that person may dispute liability to have the judgment or order enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.

(6) The Court hearing an application for the grant of leave under paragraph (3) may order the question whether the judgment or order is enforceable against the person against whom the application is made to be tried and determined in any manner in which any issue or question in an action may be tried and determined.

[E.r. 12]

### **Representation of interested persons who cannot be ascertained, etc.**

13.—(1) In any proceedings concerning—

- (a) the estate of a deceased person, or
- (b) property subject to a trust, or
- (c) the construction of a written instrument, including a statute,

the Court, if satisfied that it is expedient so to do, and that one or more of the conditions specified in paragraph (2) are satisfied, may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested (whether presently or for any future, contingent or unascertained interest) in or affected by the proceedings.

(2) The conditions for the exercise of the power conferred by paragraph (1) are as follows—

- (a) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;
- (b) that the person, class or some member of the class, though ascertained, cannot be found;
- (c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purpose of saving expense.

(3) Where in any proceedings to which paragraph (1) applies, the Court exercises the power conferred by that paragraph, a judgment or order of the Court given or made when the person or

persons appointed in exercise of that power are before the Court shall be binding on the person or class represented by the person or persons so appointed.

(4) Where, in any such proceedings, a compromise is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings (including unborn or ascertained persons) but—

- (a) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise, or
- (b) the absent persons are represented by a person appointed under paragraph (1) who so assents,

the Court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order has been obtained by fraud or non-disclosure of material facts.

[E.r. 13]

#### **Representation of beneficiaries by trustees, etc.**

14.—(1) Any proceedings, including proceedings to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate, as the case may be; and any judgment or order given or made in those proceedings shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on, the ground that the trustees, executors or administrators, as the case may be, could not or did not in fact represent the interests of those persons in the first-mentioned proceedings.

(2) Paragraph (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under rule 13.

[E.r. 14]

#### **Representation of deceased person interested in proceedings**

15.—(1) Where in any proceedings it appears to the Court that a deceased person was interested in the matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as it would have been, bound had a personal representative of that person been a party to the proceedings.

(2) Before making an order under this rule, the Court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as it thinks fit.

[E.r. 15]

#### **Proceedings against estates**

16.—(1) Where any person against whom an action would have lain has died but the cause of action survives, the action may, if no grant of probate or administration has been made, be brought against the estate of the deceased.

(2) Without prejudice to the generality of paragraph (1), an action brought against "the personal representatives of A.B. deceased" shall be treated, for the purposes of that paragraph, as having been brought against his estate.

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(3) An action purporting to have been commenced against a person shall be treated, if he is dead at its commencement, as having been commenced against his estate in accordance with paragraph (1), whether or not a grant of probate or administration was made before its commencement.

(4) In any such action as is referred to in paragraph (1) or (3)—

- (a) the plaintiff shall, during the period of validity for service of the writ or originating summons, apply to the Court for an order appointing a person to represent the deceased's estate for the purpose of the proceedings or, if a grant of probate or administration has been made since the commencement of the action, for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person so appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;
- (b) the Court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in subparagraph (a) and allow such amendments (if any) to be made and make such other order as the Court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

(5) Before making an order under paragraph (4) the Court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.

(6) Where an order is made under paragraph (4), rules 7(4) and 8(3) and (4) shall apply as if the order had been made under rule 7 on the application of the plaintiff.

(7) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings.

[E.r. 6A]

### **Actions for wrongful interference with goods**

17.—(1) Where the plaintiff in an action for wrongful interference with goods is one of two or more persons having or claiming any interest in the goods, then, unless he has the written authority of every other such person to sue on the latter's behalf, the writ or originating summons by which the action was begun shall be indorsed with a statement giving particulars of the plaintiff's title and identifying every other person who, to his knowledge, has or claims any interest in the goods.

This paragraph shall not apply to an action arising out of an accident on land due to a collision or apprehended collision involving a vehicle.

(2) A defendant to an action for wrongful interference with goods who desires to show that a third party has a better right than the plaintiff as respects all or any part of the interest claimed by the plaintiff may, at any time after entering an appearance and before any judgment or order is given or made on the plaintiff's claim, apply for directions as to whether any person named in the application (not being a person whose written authority the plaintiff has to sue on his behalf) should be joined with a view to establishing whether he has a better right than the plaintiff, or has a claim as a result of which the defendant might be doubly liable within the meaning of section 7 of the Torts (Interference with Goods) Act 1977.

(3) An application under paragraph (2) shall be made by summons, which shall be served personally on every person named in it as well as being served on the plaintiff.

(4) Where a person named in an application under paragraph (2) fails to appear on the hearing of the summons or to comply with any direction given by the Court on the application, the Court may by order deprive him of any right of action against the defendant for the wrong, either unconditionally or subject to such terms and conditions as the Court thinks fit.

[E.r. 10A]

### **Conduct of proceedings**

18. The Court may give the conduct of any action, inquiry or other proceeding to such person as it thinks fit.

[E.r. 17]

## **ORDER 16**

### **THIRD PARTY AND SIMILAR PROCEEDINGS**

#### **Third party notice**

1.—(1) Where in any action a defendant who has entered an appearance—

- (a) claims against a person not already a party to the action any contribution or indemnity; or
- (b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and the defendant but also as between either or both of them and a person not already a party to the action,

then, subject to paragraph (2), the defendant may issue a notice in Form No. 17 or 18 in Appendix A. whichever is appropriate (in this Order referred to as a third party notice), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or issue required to be determined.

(2) A defendant to an action may not issue a third party notice without the leave of the Court unless the action was begun by writ and he issues the notice before serving his defence on the plaintiff.

(3) Where a third party notice is served on the person against whom it is issued, he shall as from the time of service be a party to the action (in this Order referred to as a third party) with the same rights in respect of his defence against any claim made against him in the notice and otherwise as if he had been duly sued in the ordinary way by the defendant by whom the notice was issued.

[E.r. 1]

#### **Application for leave to issue third party notice**

2.—(1) An application for leave to issue a third party notice may be made ex parte but the Court may direct that a notice of motion for leave be issued.

(2) An application for leave to issue a third party notice must be supported by an affidavit stating—

- (a) the nature of the claim made by the plaintiff in the action;
- (b) the stage which proceedings in the action have reached;
- (c) the nature of the claim made by the applicant or particulars of, the question or issue required to be determined, as the case may be, and the facts on which the proposed third party notice is based; and
- (d) the name and address of the person against whom the third party notice is to be issued.

[E.r. 2]

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### **Issue and service of, and entry of appearance to, third party notice**

3.—(1) The order granting leave to issue a third party notice may contain directions as to the period within which the notice is to be issued.

(2) There must be served with every third party notice a copy of the writ or originating summons by which the action was begun and of the pleadings (if any) served in the action.

(3) An appearance to a third party notice may be entered in the appropriate office.

(4) Subject to the foregoing provisions of this rule, the following provisions of these Rules, namely, Order 6, rule 6(2), (3), (4) and (6), Order 10, Order 11 (except rule 3), Order 12, Order 21 and Order 75, rule 4, shall apply in relation to a third party notice and to the proceedings begun thereby as if—

- (a) the third party notice were a writ and the proceedings begun thereby an action, and
- (b) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued a defendant in that action.

[E.r. 3]

### **Third party directions**

4.—(1) If the third party enters an appearance, the defendant who issued the third party notice may apply to the Court either by summons to be served on all the other parties to the action for directions or ex parte to receive and make a rule of Court a consent of all the parties providing for the conduct or disposal of the third party proceedings and such consent when made a rule of Court shall have the effect of an order.

(2) If no summons is served to the third party and no ex parte application is made under paragraph (1), the third party may, not earlier than 7 days after entering an appearance, by summons to be served on all the other parties to the action, apply to the Court for directions or for an order to set aside the third party notice.

(3) On an application for directions under this rule the Court may—

- (a) if the liability of the third party to the defendant who issued the third party notice is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant; or
- (b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or
- (c) dismiss the application and terminate the proceedings on the third party notice,

and may do so either before or after any judgment in the action has been signed by the plaintiff against the defendant.

(4) On an application for directions under this rule the Court may give the third party leave to defend the action, either alone or jointly with any defendant, upon such terms as may be just, or to appear at the trial and to take such part therein as may be just, and generally may make such orders and give such directions as appear to the Court proper for having the rights and liabilities of the parties most conveniently determined and enforced and as to the extent to which the third party is to be bound by any judgment or decision in the action.

(5) Any order made or direction given under this rule may be varied or rescinded by the Court at any time.

[E.r. 4]

### **Default of third party; etc.**

5.—(1) If a third party does not enter an appearance or, having been ordered to serve a defence, fails to do so.

- (a) he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment (including judgment by consent) or decision in the action in so far as it is relevant to any claim, question or issue stated in that notice; and
- (b) the defendant by whom the third party notice was issued may, if judgment in default is given against him in the action, at any time after satisfaction of that judgment and, with the leave of the Court, before satisfaction thereof, enter judgment against the third party in respect of any contribution or indemnity claimed in the notice, and, with the leave of the Court, in respect of any other relief or remedy claimed therein.

(2) If a third party or the defendant by whom a third party notice was issued makes default in serving any pleading which he is ordered to serve, the Court may, on the application by summons of that defendant or the third party, as the case may be, order such judgment to be entered for the applicant as he is entitled to on the pleadings or may make such other order as may appear to the Court necessary to do justice between the parties.

(3) The Court may at any time set aside or vary a judgment entered under paragraph (1)(b) or paragraph (2) on such terms (if any) as it thinks just.

[E.r. 5]

### **Setting aside third party proceedings**

6. Proceedings on a third party notice may, at any stage of the proceedings, be set aside by the Court.

[E.r. 6]

### **Judgment between defendant and third party**

7.—(1) Where in any action a defendant has served a third party notice, the Court may at or after the trial of the action or, if the action is decided otherwise than by trial, on application order such judgment as the nature of the case may require to be entered for the defendant against the third party or for the third party against the defendant.

(2) Where judgment is given for the payment of any contribution or indemnity to a person who is under a liability to make a payment in respect of the same debt or damage, the judgment shall not be enforced without the leave of the Court until that liability has been discharged.

(3) For the purpose of paragraph (2) “liability” includes liability under a judgment in the same or other proceedings and liability under an agreement to which section 1(4) of the Civil Liability (Contribution) Act 1978(25) applies.

[E.r. 7]

### **Claims and issues between a defendant and some other party**

8.—(1) Where in any action a defendant who has entered an appearance—

- (a) claims against a person who is already a party to the action any contribution or indemnity;
- or

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- (b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and himself but also as between either or both of them and some other person who is already a party to the action,

then, subject to paragraph (2), the defendant may, without leave, issue and serve on that person a notice containing a statement of the nature and grounds of his claim, or as the case may be, of the question or issue required to be determined, but need not serve with, the notice any document referred to in rule 3(2).

(2) Where a defendant makes such a claim as, is mentioned in paragraph (1) and that claim could be made by him by counterclaim in the action, paragraph (1) shall not apply in relation to the claim.

(3) No appearance to such a notice shall be necessary if the person on whom it is served has entered an appearance in the action or is a plaintiff therein, and the same procedure shall be adopted for the determination between the defendant by whom, and the person on whom, such a notice is served on the claim, question or issue stated in the notice as would be appropriate under this Order if the person served with the notice were a third party and (where he has entered an appearance in the action or is a plaintiff) had entered an appearance to the notice.

(4) Rule 4(2) shall have effect in relation to proceedings on a notice issued under this rule as if for the words “7 days after entering an appearance” there were substituted the words “21 days after service of the notice on him”.

(5) Notwithstanding paragraph (3) it shall not be necessary for any party whose only claim under paragraph (1) of this rule is for contribution or indemnity to apply to the Court for directions or serve a statement of his claim but any issue between that party and the person on whom such notice is served shall be determined at or after the trial of the action as the trial judge may direct.

(6) Where defendants are sued as tortfeasors liable in respect of the same damage, they shall be treated as opposite parties and no notice need be served under this rule, but any such defendant, if he intends, in support of a claim for contribution or indemnity, to rely on facts or particulars not pleaded by the plaintiff or on any contractual right, must furnish to the other parties particulars in Form 17.

[E.r. 8]

### **Claims by third and subsequent parties**

9.—(1) Where a defendant has served a third party notice and the third party makes such a claim or requirement as is mentioned in rule 1 or rule 8, this order shall, with the modification mentioned in paragraph (2) and any other necessary modifications, apply as if the third party were a defendant; and similarly where any further person to whom by virtue of this rule this Order applies as if he were a third party makes such a claim or requirement.

(2) The modification referred to in paragraph (1) is that paragraph (3) shall have effect in relation to the issue of a notice under rule 1 by a third party in substitution for rule 1(2).

(3) A third party may not issue a notice under rule 1 without the leave of the Court unless the action in question was begun by writ and he issues the notice before the expiration of 14 days after the time limited for appearing to the notice issued against him.

[E.r. 9]

### **Offer of contribution**

10. If, at any time after he has entered an appearance, a party to an action who, either as a third party or as one of two or more tortfeasors liable in respect of the same damage, stands to be held liable



in the action to another party to contribute towards any debt or damages which may be recovered against that other party in the action, makes (without prejudice to his defence) a written offer to that other party to contribute a specified amount or to a specified extent to the debt or damages, then, notwithstanding that he reserves the right to bring the offer to the attention of the judge at the trial, the offer shall not be brought to the attention of the judge until after all questions of liability and amount of debt or damages have been decided.

[E.r. 10]

#### **Disposal of claim for contribution or indemnity**

11. Any claim to contribution or indemnity or other relief or remedy under this Order may be decided in the action notwithstanding that the plaintiff's claim has been satisfied by a payment into Court, compromise, judgment or otherwise.

#### **Counterclaim by defendant**

12. Where in any action a counterclaim is made by a defendant, the foregoing provisions of this Order shall apply in relation to the counterclaim as if the subject-matter of the counterclaim were the original subject-matter of the action, and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

[E.r. 11]

## ORDER 17 INTERPLEADER

#### **Entitlement to relief by way of interpleader**

1. Where a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto, he may apply to the Court for relief by way of interpleader.

[E.r. 1]

#### **Mode of application**

2.—(1) An application for relief under this Order must be made by originating summons unless made in a pending action, in which case it must be made by summons in the action.

(2) No appearance need be entered to an originating summons under this rule.

(3) A summons under this rule must be supported by evidence that the applicant—

(a) claims no interest in the subject-matter in dispute other than for charges or costs,

(b) does not collude with any of the claimants to that subject-matter, and

(c) is willing to pay or transfer that subject-matter into court or to dispose of it as the Court may direct.

[E.r. 3]

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### **Powers of Court hearing summons**

3.—(1) Where on the hearing of a summons under this Order all the persons by whom adverse claims to the subject-matter in dispute (hereafter in this Order referred to as “the claimants”) appear, the Court may order—

- (a) that any claimant be made a defendant in any action pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this Order, or
- (b) that an issue between the claimants be stated and tried and may direct which of the claimants is to be plaintiff and which defendant.

(2) Where—

- (a) all the claimants consent or any of them so requests, or
- (b) the question at issue between the claimants is a question of law and the facts are not in dispute,

the Court may summarily determine the question at issue between the claimants and make an order accordingly on such terms as may be just.

(3) Where a claimant, having been duly served with a summons for relief under this Order, does not appear on the hearing of the summons or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the claimant, and all persons claiming under him, for ever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the claimants as between themselves.

[E.r. 5]

### **Power to stay proceedings**

4. Where a defendant to an action applies for relief under this Order in the action, the Court may by order stay all further proceedings in the action.

[E.r. 7]

### **Other powers**

5. Subject to the foregoing rules of this Order, the Court may in or for the purpose of any interpleader, proceedings make such order as to costs or any other matter as it thinks just.

[E.r. 8]

### **One order in several causes or matters**

6. Where the Court considers it necessary or expedient to make an order in any interpleader proceedings in several pending causes or matters pending in any Division, the Court may make such, an order, and the, order shall be entitled in all those causes or matters and shall be binding on all the parties to them.

[E.r. 9]

### **Discovery**

7. Orders 24 and 26 shall, with the necessary modifications, apply in relation to an interpleader issue as they apply in relation to any other cause or matter.

[E.r. 10]

### **Trial of interpleader issue**

8.—(1) Order 35 shall, with the necessary modifications; apply to the trial of an interpleader issue as it applies to the trial of an action.

(2) The Court by whom an interpleader issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the interpleader proceedings.

[E.r. 11]

## **ORDER 18 PLEADINGS**

### **Service of statement of claim**

1. Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are two or more defendants, on each defendant, and must do so either when the writ, or notice of the writ, is served on that defendant or at any time after service of the writ or notice but before the expiration of 6 weeks after that defendant enters an appearance.

[E.r. 1]

### **Service of defence**

2.—(1) Subject to paragraph (2), a defendant who enters an appearance in, and intends to defend, an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of 21 days after the time limited for appearing or after the statement of claim is served on him, whichever is the later.

(2) If a summons under Order 14, rule 1 or under Order 86, rule 1 is served on a defendant before he serves his defence, paragraph (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to, defend the action and, in that case, shall have effect as if it required him to serve his defence within 21 days after the making of the order or within such other period as may be specified therein.

[E.r. 2]

### **Service of reply and defence to counterclaim**

3.—(1) A plaintiff on whom a defendant serves a defence must serve a reply on that defendant if it is needed for compliance with rule 8, and if no reply is served, rule 14(1) will apply.

(2) A plaintiff on whom a defendant serves a counterclaim must, if he intends to defend it, serve on that defendant a defence to counterclaim.

(3) Where a plaintiff serves both a reply and a defence to counterclaim on any defendant, he must include them in the same document.

(4) A reply to any defence must be served by the plaintiff before the expiration of 21 days after the service on him of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of 21 days after the service on him of the counterclaim to which it relates.

[E.r. 3]

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### **Pleadings subsequent to reply**

4. No pleading subsequent to a reply or a defence to counterclaim shall be served except with the leave of the Court.

[E.r. 4]

### **Service of pleadings in the Long Vacation**

5. Without prejudice to Order 3, rule 3, pleadings may be served during the Long Vacation.

### **Pleadings: formal requirements**

6.—(1) Every pleading in an action must bear on its face—

- (a) the year in which the writ in the action was issued and the number of the action.
- (b) the title of the action.
- (c) the Division of the High Court to which the action is assigned.
- (d) the description of the pleading, and
- (e) the date on which it was served.

(2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.

(3) Dates, sums and other numbers must be expressed in a pleading in figures and not in words.

(4) Every pleading of a party must be indorsed—

- (a) where the party sues or defends in person, with his name and address;
- (b) in any other case, with the name or firm and business address of the solicitor by whom it was served.

(5) Every pleading of a party must be signed by counsel, if settled by him, and, if not, by the party's solicitor or by the party, if he sues or defends in person.

[E.r. 6]

### **Facts, not evidence, to be pleaded**

7.—(1) Subject to the provisions of this rule, and rules 10, 11, 12 and 23, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case permits.

(2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.

(3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.

(4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.

(5) A party must refer in his pleading to any statutory provision on which he relies, specifying the relevant section, subsection, regulation, paragraph or other provision, as the case may be.

[E.r. 7]

### **Matters which must be specifically pleaded**

8.—(1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality—

- (a) which he alleges makes any claim or defence of the opposite party not maintainable; or
- (b) which, if not specifically pleaded, might take the opposite party by surprise; or
- (c) which raises issues of fact not arising out of the preceding pleading,

and, where the defendant intends to rely on the defence of inevitable accident or Act of God, he must specifically plead such defence with all necessary particulars, but this requirement shall not transfer to the defendant any burden of proof which lies on, the plaintiff.

(2) Without prejudice to paragraph (1), a defendant to an action for the recovery of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.

(3) A claim for exemplary damages must be specifically pleaded together with the facts on which the party pleading relies.

[E.r. 8]

### **Matters may be pleaded whenever arising**

9. Subject to rules 7(1), 10 and 15(2), a party may in any pleading plead any matter which has arisen at any time, whether before or since the issue of the writ.

[E.r. 9]

### **Departure**

10.—(1) A party shall not in any pleading make any allegation of fact, or raise any new ground, or claim, inconsistent with a previous pleading of his.

(2) Paragraph (1) shall not be taken as prejudicing the right of a party to amend, or, apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

[E.r. 10]

### **Points of law may be pleaded**

11. A party may by his pleading raise any point of law.

[E.r. 11]

### **Particulars of pleading**

12.—(1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words—

- (a) particulars of any negligence, breach of statutory duty, misrepresentation, fraud, breach of trust, wilful default, undue influence or fault of the plaintiff on which the party pleading relies; and
- (b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

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(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed 3 folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served and, if so, when, or is to be served with the pleading.

(3) The Court, may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.

(4) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of paragraph (3), the Court may, on such terms as it thinks just, order that party to serve on any other party—

- (a) where he alleges knowledge, particulars of the facts on which he relies, and
- (b) where he alleges notice, particulars of the notice.

(5) An order under this rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

(6) Where the applicant for an order under this rule did not apply by letter for the particulars he requires, the Court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.

[E.r. 12]

### **Admissions and denials**

13.—(1) Subject to paragraph (4), any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial of it.

(2) A traverse may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.

(3) Subject to paragraph (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them.

(4) Any allegation that a party has suffered damage and any allegation as to the amount of damages is deemed to be traversed unless specifically admitted.

[E.r. 13]

### **Denial by joinder of issue**

14.—(1) If there is no reply to a defence, there is an implied joinder of issue on that defence.

(2) Subject to paragraph (3)—

- (a) there is at the close of pleadings an implied joinder of issue on the pleading last served, and
- (b) a party may in his pleading expressly join issue on the next preceding pleading.

(3) There can be no joinder of issue, implied or express, on a statement of claim or counterclaim.

(4) A joinder of issue operates as a denial of every material, allegation of fact made in the pleading on which there is an implied or express joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express, joinder of issue operates as, a denial of every other such allegation.

[E.r. 14]

### **Statement of claim**

15.—(1) A statement of claim must state specifically the relief or, remedy which, the plaintiff claims; but costs need not be specifically claimed.

(2) A statement of claim shall not contain any allegation or claim in respect of a cause of action unless that cause of, action is mentioned in the writ or arises from facts which, are the same as, or include or form part of, facts giving rise to a cause of action, so mentioned; but, subject to that, a plaintiff may in his statement of claim alter, modify or extend any claim made by him in the indorsement of the writ without amending the indorsement.

(3) Every statement of claim must bear on its face a statement of the date on which the writ in the action was issued.

[E.r. 15]

### **Defence of tender**

16. Where in any action a defence of tender before action is pleaded, the defendant must pay into court in accordance with Order 22 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into court has been made.

[E.r. 16]

### **Defence of set-off**

17. Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim.

[E.r. 17]

### **Counterclaim and defence to counterclaim**

18. Without prejudice to the general application of this Order to a counterclaim and a defence to counterclaim, or to any provision thereof which applies to either of those pleadings specifically—

- (a) rule 15(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff;
- (b) rules 8(2), 16 and 17 shall, with the necessary modifications apply to a defence to counterclaim as they apply to a defence.

[E.r. 18]

### **Striking out pleadings and indorsements**

19.—(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that—

- (a) it discloses no reasonable cause of action or defence, as the case may be; or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the court,

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and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition; as the case may be, were a pleading.

[E.r. 19]

### **Close of pleadings**

20.—(1) The pleadings in an action are deemed to be closed—

- (a) at the expiration of 21 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim, or
- (b) if neither a reply nor a defence to counterclaim is served at the expiration of 21 days after service of the defence.

(2) The pleadings in an action are deemed to be closed at the time provided by paragraph (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

[E.r. 20]

### **Trial without pleadings**

21.—(1) Where in an action to which this rule applies any defendant has entered an appearance in the action, the plaintiff or that defendant may apply to the Court by summons for an order that the action shall be tried without pleadings or further pleadings, as the case may be.

(2) If, on the hearing of an application under this rule, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any other reason the action can properly be tried without pleadings or further pleadings, as the case may be, the Court shall order the action to be so tried, and may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree to such, a statement, may settle the statement itself.

(3) Where the Court makes an order under paragraph (2), it shall, and where it dismisses an application for such an order, it may, give such directions as to the further conduct of the action as may be appropriate.

(4) This rule applies to every action begun by writ other than one which includes—

- (a) a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment; or
- (b) a claim by the plaintiff based on an allegation of fraud.

[E.r. 21]

### **Saving for defence under Merchant Shipping Acts**

22. Nothing in Order 75, rules 2 and 36 to 39, shall be taken as limiting the right of any shipowner or other person to rely by way of defence on any provision of the Merchant Shipping Acts 1894 to 1965 which limits the amount of his liability in connection with a ship or other property.

[E.r. 22]



### **Conviction, etc. to be adduced in evidence: matters to be pleaded**

23.—(1) If in any action which is to be tried with pleadings any party intends, in reliance on section 7 of the Civil Evidence Act (Northern Ireland) 1971(26), to adduce evidence that a person was convicted of an offence by or before a court in the United Kingdom or by a court-martial there or elsewhere, he must include in his pleading a statement of his intention with particulars of—

- (a) the conviction and the date thereof,
- (b) the court or court-martial which made the conviction, and
- (c) the issue in the proceedings to which the conviction is relevant.

(2) If in any action which is to be tried with pleadings any party intends, in reliance on section 8 of the said Act of 1971, to adduce evidence that a person was found guilty of adultery in matrimonial proceedings or was adjudged to be the father of a child in affiliation proceedings before a court in the United Kingdom, he must include in his pleading a statement of his intention with particulars of—

- (a) the finding or adjudication and the date thereof,
- (b) the court which made the finding or adjudication and the proceedings in which it was made, and
- (c) the issue in the proceedings to which the finding or adjudication is relevant.

(3) Where a party's pleading includes such a statement as is mentioned in paragraph (1) or (2), then if the opposite party—

- (a) denies the conviction, finding of adultery or adjudication of paternity to which the statement relates, or
- (b) alleges that the conviction, finding or adjudication was erroneous, or
- (c) denies that the conviction, finding or adjudication is relevant to any issue in the proceedings,

he must make the denial or allegation in his pleading.

- (4) This rule shall not apply to evidence intended to impeach the credit of a party or witness.

[E.r. 7A]

## **ORDER 19**

### **DEFAULT OF PLEADINGS**

#### **Default in service of statement of claim**

1. Where the plaintiff is required by these Rules to serve a statement of claim on a defendant and he fails to serve it on him, the defendant may, after the expiration of the period fixed by or under these Rules for service of the statement of claim, apply to the Court for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

[E.r. 1]

#### **Default of defence claim for liquidated demand**

2.—(1) Where the plaintiff's claim against a defendant is for a liquidated demand only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter final judgment against that

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(26) 1971 c. 36 (N.I.)

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defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.

(2) Order 13, rule H2) and (3), shall apply for the purposes of this rule as it applies for the purposes of that rule.

[E.r. 2]

**Default of defence : claim for unliquidated damages**

3. Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

[E.r. 3]

**Default of defence : claim for detention of goods**

4.—(1) Where the plaintiff's claim against a defendant relates to the detention of goods only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for the service of the defence and subject to Order 42, rule 6—

- (a) at his option enter either—
  - (i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs, or
  - (ii) interlocutory judgment for the value of the goods to be assessed and costs, or
- (b) apply by summons for judgment against that defendant for delivery of the goods without giving him the alternative of paying their assessed value,

and in any case proceed with the action against the other defendants, if any.

(2) A summons under paragraph (1)(b) must be supported by affidavit and, notwithstanding Order 65, rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

[E.r. 4]

**Claim for possession of land**

5.—(1) Where the plaintiff's claim against a defendant is for possession of land only, then, subject to paragraphs (2), (3) and (4), if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, and on producing a certificate by his solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 88, rule 1, enter judgment for possession of the land as against that defendant and costs, and proceed with the action against the other defendants, if any.

(2) The plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under this rule unless he produces a certificate by his solicitor, or (if he sues in person) an affidavit, stating that the claim does not relate to a dwelling-house.

(3) The plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under this rule where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent unless he produces a certificate by his solicitor, or (if he sues in person) an affidavit, stating that the land does not comprise or include a holding agricultural or pastoral or partly agricultural and partly pastoral.

(4) The plaintiff shall not be entitled to enter judgment under this rule where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent unless he files an affidavit made by the landlord, his agent, receiver or clerk, stating that there was at the date of issue of the writ at least one year's rent due over and above all just and fair allowances.

(5) An application for leave to enter judgment under paragraph (2) or (3) shall be by summons stating the grounds of the application, and the summons must, unless the Court otherwise orders and notwithstanding anything in Order 65, rule 9, be served on the defendant against whom it is sought to enter judgment.

(6) If the Court refuses leave to enter judgment, it may make or give any such order or directions as it might have made or given had the application been an application for judgment under Order 14, rule 1.

(7) Where there is more than one defendant, any judgment entered under this rule shall contain a stay of enforcement against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

(8) Where the plaintiff is a superior landlord and he applies under paragraph (3) for leave to enter judgment against a defendant who is an immediate landlord the Court may, having regard to the provisions of section 12 of the Land Law (Ireland) Act 1896(27):—

- (a) give such directions as to notice to tenants and otherwise and grant leave subject to such limitations as to enforcement of the judgment and such provisions as to costs as it thinks just;
- (b) on proof by affidavit that the non-payment of rent by the defendant is due to the non-payment of rent by the tenant of the holding, issue a certificate to that effect.

[E.r. 5]

#### **Default of defence: mixed claims**

6. Where the plaintiff makes against a defendant two or more of the claims mentioned in rules 2 to 5, and no other claim, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim made, and proceed with the action against the other defendants, if any.

[E.r. 6]

#### **Default of defence: other claims**

7.—(1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 5, then, if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.

(2) Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph, the plaintiff may—

- (a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or

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(27) 1896 c. 47

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- (b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment, against the other defendants.
- (3) An application under paragraph (1) must be by summons or motion.

[E.r. 7]

#### **Default of defence to counterclaim**

8. A defendant who counterclaims against a plaintiff shall be treated for the purposes of rules 2 to 7 as if he were a plaintiff who had made against a defendant the claim made in the counterclaim and, accordingly, where the plaintiff or any other party against whom the counterclaim is made fails to serve a defence to counterclaim, those rules shall apply as if the counterclaim were a statement of claim, the defence to counterclaim a defence and the parties making the counterclaim and against whom it is made were plaintiffs and defendants respectively, and as if references to the period fixed by or under these Rules for service of the defence were references to the period so fixed for service of the defence to counterclaim.

[E.r. 8]

#### **Setting aside judgment**

9. The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

[E.r. 9]

## **ORDER 20 AMENDMENT**

#### **Amendment of writ without leave**

1.—(1) Subject to paragraph (3), the plaintiff may, without the leave of the Court, amend the writ once at any time before the pleadings in the action begun by the writ are deemed to be closed.

(2) Where a writ is amended under this rule after service thereof, then, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on each defendant to the action.

- (3) This rule shall not apply in relation to an amendment which consists of—
  - (a) the addition, omission or substitution of a party to the action or an alteration of the capacity in which a party to the action sues or is sued, or
  - (b) the addition or substitution of a new cause of action, or
  - (c) (without prejudice to rule 3(1)) an amendment of the statement of claim (if any) indorsed on the writ,

unless the amendment is made before service of the writ on any party to the action.

[E.r. 1]

#### **Amendment of appearance**

2. A defendant may not amend his memorandum of appearance without the leave of the Court.

[E.r. 2]

### **Amendment of pleadings without leave**

3.—(1) A party may, without the leave of the Court, amend any pleading of his once at any time before the pleadings are deemed to be dosed and, where he does so, he must serve the amended pleading on the opposite party.

(2) Where an amended statement of claim is served on a defendant—

- (a) the defendant, if he has already served a defence on the plaintiff, may amend his defence, and
- (b) the period for service of his defence or amended defence, as the case may be; shall be either the period fixed by or under these Rules for service of his defence or a period of 14 days after the amended statement of claim is served on him, whichever expires later.

(3) Where an amended defence is served on the plaintiff by a defendant—

- (a) the plaintiff, if he has already served a reply on that defendant, may amend his reply, and
- (b) the period for service of his reply or amended reply, as the case may be, shall be either the period fixed by or under these Rules for service of his reply or a period of 14 days after the amended defence is served on him.

(4) In paragraphs (2) and (3) references to a defence and a reply include references to a counterclaim and a defence to counterclaim respectively.

(5) Where an amended counterclaim is served by a defendant on a party (other than the plaintiff) against whom the counterclaim is made, paragraph (2) shall apply as if the counterclaim were a statement of claim and as if the party by whom the counterclaim is made were the plaintiff and the party against whom it is made a defendant.

(6) Where a party has pleaded to a pleading which is subsequently amended and served on him under paragraph (1), then, if that party does not amend his pleading under the foregoing provisions of this rule, he shall be taken to rely on it in answer to the amended pleading, and Order 18, rule 14(2), shall have effect in such a case as if the amended pleading had been served at the time when that pleading, before its amendment under paragraph (1), was served.

[E.r. 3]

### **Application for disallowance of amendment made without leave**

4.—(1) Within 14 days after the service on a party of a writ amended under rule 1(1) or of a pleading amended under rule 3(1), that party may apply to the Court to disallow the amendment.

(2) Where the Court hearing an application under this rule is satisfied that if an application for leave to make the amendment in question had been made under rule 5 at the date when the amendment was made under rule 1(1) or rule 3(1) leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part to be struck out.

(3) Any order made on an application under this rule may be made on such terms as to costs or otherwise as the Court thinks just.

[E.r. 4]

### **Amendment of writ or pleading with leave**

5.—(1) Subject to Order 15, rules 6, 7 and 8, and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue

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of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

(3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the party intending to sue or, as the case may be, intended to be sued.

(4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under paragraph (2) if the capacity in which, if the amendment is made, the party will sue is one in which at the date of issue of the writ or the making of the counterclaim, as the case may be, he might have sued.

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

[E.r. 5]

#### **Amendment during Long Vacation**

6. Every writ, originating summons, petition, pleading or other document in any proceedings may be amended during the Long Vacation.

[E.r. 6]

#### **Amendment of other originating process**

7. Rule 5 shall have effect in relation to an originating summons, a petition and notice of an originating motion as it has effect in relation to a writ.

[E.r. 7]

#### **Amendment of certain other documents**

8.—(1) For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at any stage of the proceedings and either of its own motion or on the application of any party to the proceedings order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) This rule shall not have effect in relation to a judgment or order.

[E.r. 8]

#### **Failure to amend after order**

9. Where the Court makes an order under this Order giving any party leave to amend a writ, pleading or other document, then, if that party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, of a period of 14 days after the order was made, the order shall cease to have effect, without prejudice, however, to the power of the Court to extend the period.

[E.r. 9]

### **Mode of amendment of writ, etc.**

10.—(1) Where the amendments authorised under any rule of this Order to be made in a writ, pleading or other document are so numerous or of such nature or length that to make written alterations of the document so as to give effect to them would make it difficult or inconvenient to read, a fresh document, amended as so authorised, must be prepared and, in the case of a writ or originating summons re-issued, but, except as aforesaid and subject to any direction given under rules 5 or 8, the amendments so authorised may be affected by making in writing the necessary alterations of the document and, in the case of a writ or originating summons, causing it to be re-sealed and filing a copy thereof.

(2) A writ, pleading or other document which has been amended under this Order must be indorsed with a statement that it has been amended, specifying the date on which it was amended, the name of the judge or master by whom the order (if any) authorising the amendment was made and the date thereof, or, if no such order was made, the number of the rule of this Order in pursuance of which the amendment was made.

[E.r. 10]

### **Amendment of judgment and orders**

11. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on motion or summons without an appeal.

[E.r. 11]

## **ORDER 21**

### **WITHDRAWAL AND DISCONTINUANCE**

#### **Withdrawal of appearance**

1. A party who has entered an appearance in an action may withdraw the appearance at any time with the leave of the Court.

[E.r. 1]

#### **Discontinuance of action, etc., without leave**

2.—(1) The plaintiff in an action begun by writ may, without the leave of the Court, discontinue the action, or withdraw any particular claim made by him therein, as against any or all of the defendants at any time not later than 14 days after service of the defence on him or, if there are two or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned.

(2) A defendant may, without the leave of the Court—

- (a) withdraw his defence or any part of it at any time.
- (b) discontinue a counterclaim, or withdraw any particular claim made by him therein, against any or all of the parties against whom it is made, at any time not later than 21 days after service on him of a defence to counterclaim or, if the counterclaim is made against two or more parties, of the defence to counterclaim last served,

by serving a notice to that effect on the plaintiff or other party concerned.

(3) Where there are two or more defendants to an action not all of whom serve a defence on the plaintiff, and the period fixed by or under these Rules for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence, paragraph (1)

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shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period.

This paragraph shall apply in relation to a counterclaim as it applies in relation to an action with the substitution for references to a defence, to the plaintiff and to paragraph (1), of references to a defence to counterclaim, to the defendant and to paragraph (2) respectively.

(4) If all parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by producing to the proper officer a written consent to the action being withdrawn signed by all the parties.

[E.r. 2]

#### **Discontinuance of action, etc., with leave**

3.—(1) Except as provided by rule 2, a party may not discontinue an action (whether begun by writ or otherwise) or counterclaim, or withdraw any particular claim made by him therein, without the leave of the Court, and the Court hearing an application for the grant of such leave may order the action or counterclaim to be discontinued, or any particular claim made therein to be struck out, as against all or any of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.

(2) An application for the grant of leave under this rule may be made by summons or motion.

[E.r. 3]

#### **Effect of discontinuance**

4. Subject to any terms imposed by the Court in granting leave under rule 3, the fact that a party has discontinued an action or counterclaim or withdrawn a particular claim made by him therein shall not be a defence to a subsequent action for the same, or substantially the same, cause of action.

[E.r. 4]

#### **Stay of, subsequent action until costs paid**

5.—(1) Where a party has discontinued an action or counterclaim or withdrawn any particular claim made by him therein and he is liable to pay any other party's costs of the action or counterclaim or the costs occasioned to any other party by the claim withdrawn, then if, before payment of those costs, he subsequently brings an action for the same, or substantially the same, cause of action, the Court may order the proceedings in that action to be stayed until those costs are paid.

(2) An application for an order under this rule may be made by summons or motion.

[E.r. 5]

#### **Withdrawal of summons**

6. A party who has taken out a summons in a cause or matter may not withdraw it without the leave of the Court.

[E.r. 6]



## ORDER 22

### PAYMENT INTO AND OUT OF COURT

#### **Payment into court**

1.—(1) In any action for debt or damages any defendant may, without leave, at any time after he has entered an appearance in the action and before the close of pleadings or with leave at any time after the close of pleadings, pay into court a sum of money in satisfaction of the cause of action in respect of which the plaintiff claims or, where two or more causes of action are joined in the action, a sum or sums of money in satisfaction of any or all of those causes of action.

(2) On making any payment into court under this rule, and on increasing any payment already made, the defendant must give notice thereof in Form No. 20 in Appendix A to the plaintiff and every other defendant (if any) and within 3 days after receiving the notice the plaintiff must send the defendant a written acknowledgment of its receipt.

(3) A defendant may, without leave, before the close of pleadings and thereafter with leave, give notice of an increase in a payment made under this rule but, subject to that and without prejudice to paragraph (5), a notice of payment may not be withdrawn or amended without the leave of the Court which may be granted on such terms as may be just.

(4) Where two or more causes of action are joined in the action and money is paid into court under this rule, in respect of all, or some only of, those causes of action, the notice of payment—

- (a) must state that the money is paid in respect of all those causes of action, or, as the case may be, must specify the cause or causes of action in respect of which the payment is made, and
- (b) where the defendant makes separate payments in respect of each, or any two or more, of those causes of action, must specify the sum paid in respect of that cause or, as the case may be, those causes of action.

(5) Where a single sum of money is paid into court under this rule in respect of two or more causes of action, then, if it appears to the Court that the plaintiff is embarrassed by the payment, the Court may, subject to paragraph (6), order the defendant to amend the notice of payment so as to specify the sum paid in respect of each cause of action.

(6) Where a cause of action under the Fatal Accidents (Northern Ireland) Order 1977<sup>(28)</sup> and a cause of action under the Law Reform-(Miscellaneous Provisions) Act (Northern Ireland) 1937<sup>(29)</sup> are joined in an action, with or without any other cause of action, the causes of action under the said Order and the said Act shall, for the purpose of paragraph (5), be treated as one cause of action.

[E.r. 1]

#### **Payment in by defendant who has counterclaimed**

2. Where a defendant, who makes by counterclaim a claim against the plaintiff for a debt or damages, pays a sum or sums of money into court under rule 1, the notice of payment must state, if it be the case, that in making the payment the defendant has taken into account and intends to satisfy—

- (a) the cause of action in respect of which he claims, or
- (b) where two or more causes of action are joined in the counterclaim, all those causes of action or if not all, which of them.

[E.r. 2]

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<sup>(28)</sup> S.I. 1977 No. 1251 (N.I. 18)

<sup>(29)</sup> 1937 c. 9 (N.I.)

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### **Acceptance of money paid into court**

3.—(1) Where money is paid into court under rule I then, within 21 days after receipt of the notice of payment or, where more than one payment has been made or the notice has been amended, within 21 days after receipt of the notice of the last payment or the amended notice but, in any case, before the trial or hearing of the action begins, the plaintiff may—

- (a) where the money was paid in respect of the cause of action, or all the clauses of action in respect of which he claims, accept the money in satisfaction of that cause of action or those causes of action, as the case may be, or
- (b) where the money was paid in respect of some only of the causes of action in respect of which he claims, accept in satisfaction of any such cause or causes of action the sum specified in respect of that cause or those causes of action in the notice of payment,

by giving notice in Form No. 21 in Appendix A to every defendant to the action.

(2) On the plaintiff's accepting any money paid into court all further proceedings in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates, both against the defendant making the payment and against any other defendant sued jointly with him or in the alternative to him, shall be stayed.

(3) Where money is paid into court by a defendant who made a counterclaim and the notice of payment stated, in relation to any sum so paid, that in making the payment the defendant had taken into account and satisfied the cause or causes of action, or the specified cause or causes of action in respect of which he claimed, then, on the plaintiff's accepting that sum, all further proceedings on the counterclaim or in respect of the specified cause or causes of action, as the case may be, against the plaintiff shall be stayed.

(4) A plaintiff who has accepted any sum paid into court shall, subject to rules 4 and 10, be entitled to receive payment of that sum in satisfaction of the cause or causes of action to which the acceptance relates.

[E.r. 3]

### **Order for payment out of money accepted required in certain cases**

4.—(1) Where a plaintiff accepts any sum paid into court and that sum was paid into court—

- (a) by some but not all of the defendants sued jointly or in the alternative by him, or
- (b) with a defence of tender before action, or,
- (c) in an action to which Order 80 rule 10 applies, or,
- (d) in satisfaction either of causes of action arising under the Fatal Accidents (Northern Ireland) Order 1977 and Part III of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937, or a cause of action arising under the said Order where more than one person is entitled to the money,

the money in court shall not be paid out except under paragraph (2), or in pursuance of an order of the Court, and the order shall deal with the whole costs of the action or of the cause of action to which the payment relates, as the case may be.

(2) Where an order of the Court is required under paragraph (1) by reason only of paragraph (1) (a), then if, either before or after accepting the money paid into court by some only of the defendants sued jointly or in the alternative by him, the plaintiff discontinues the action against all the other dependants and those defendants consent in writing to the payment out of that sum, it may be paid out without an order of the Court.

(3) Where after the trial or hearing of an action has begun a plaintiff accepts any money paid into court and all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates are stayed by virtue of rule 3(2), then,

notwithstanding anything in paragraph (2), the money shall not be paid out except in pursuance of an order of the Court, and, the order shall deal with the whole costs of the action.

[E.r. 4]

#### **Money remaining in court**

5. If any money paid into court in all action is not accepted in accordance with rule 3, the money remaining in court shall not be paid out except in pursuance of an order of the Court which may be made at any time before, at or after the trial or hearing of the action; and where such an order is made before the trial or hearing the money shall not be paid out except in satisfaction of the cause or causes of action in respect of which it was paid in.

[E.r. 5]

#### **Counterclaim**

6. A plaintiff against whom a counterclaim is made and any other defendant to the counterclaim may pay money into court in accordance with rule 1, and that rule and rules 3 (except paragraph (3)), 4 and 5 shall apply accordingly with the necessary modifications.

[E.r. 6]

#### **Non-disclosure of payment into court**

7. Except in an action to which a defence of tender before action is pleaded, and except in an action all further proceedings in which are stayed by virtue of rule 3(2) after the trial or hearing has begun, the fact that money has been paid into court under the foregoing provisions of this Order shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing of the action or counterclaim or of any question or issue as to the debt or damages until all questions of liability and of the amount of the debt or damages have been decided.

[E.r. 7]

#### **Money paid into court under order**

8.—(1) Subject to paragraph (2), money paid into court under an order of the Court shall not be paid out except in pursuance of an order of the Court.

(2) Unless the Court otherwise orders, a party who has paid money into court in pursuance of an order made under Order 14—

- (a) may by notice to the other party appropriate the whole or any part of the money and any additional payment, if necessary, to any particular claim made in the writ or counterclaim, as the case may be, and specified in the notice, or
- (b) if he pleads a tender, may by his pleadings appropriate the whole or any part of the money as payment into court of the money alleged to have been tendered;

and money appropriated in accordance with this rule shall be deemed to be money paid into court in accordance with rule 1 or money paid into court with a plea of tender, as the case may be, and this Order shall apply accordingly.

[E.r. 8]

#### **Person to whom payment to be made**

9.—(1) Where the party entitled to money in court is a person in respect of whom a certificate is or has been in force entitling him to legal aid under Part I of the Legal Aid and Advice Act

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(Northern Ireland) 1965(30), payment shall be made only to that party's solicitor (or, if he is no longer represented by a solicitor, then, if the Court so orders, to the Incorporated Law Society of Northern Ireland), without the need for any authority from the party.

(2) Subject to paragraph (1); payment shall be made to the party entitled or to his solicitor.

(3) This rule applies whether the money in court has been paid into court under rule 1 or under an order of the Court or a certificate of a master.

[E.r. 10]

#### **Payment out: small intestate estates**

10. Where a person entitled to a fund in court, or a share of such fund, dies intestate and the Court is satisfied that no grant of administration of his estate has been made and that the assets of his estate do not exceed £1,500 in value, including the value of the fund or share, it may order that the fund or share shall be paid, transferred or delivered to the person who, being a widower, widow, child, father, mother, brother or sister of the deceased, would have the prior right to a grant of administration of the estate of the deceased.

[E.r. 11]

#### **Payment of hospital expenses**

11.—(1) This rule applies in relation to an action or counterclaim for bodily injury arising out of the use of a motor vehicle on a road or in a place to which the public have a right of access in which the claim for damages includes a sum for hospital expenses.

(2) Where the party against whom the claim is made, or an authorised insurer within the meaning of Part V of the Road Traffic Act (Northern Ireland) 1970(31) pays the amount for which that party or insurer, as the case may be, is or may be liable under section 84 of that Act in respect of the treatment afforded by a hospital to the person in respect of whom the claim is made, the party against whom the claim is made must, within 7 days after the claim is made, give notice of the payment to all the other parties to the action.

[E.r. 12]

#### **Investment of money in court**

12. Cash under the control of or subject to the order of the Court may be invested in any manner specified in paragraphs 1 to 10 and 12 of Part II of Schedule 1 to the Trustee Investments Act 1961(32), as restricted in their operation by Part IV of that Schedule.

[E.r. 13]

## ORDER 23

### SECURITY FOR COSTS

#### **Security for costs of action, etc.**

1.—(1) Where, on the application of a defendant to an action or other proceeding in the High Court, it appears to the Court—

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(30) 1965 c. 8  
(31) 1970 c. 2 (N.I.)  
(32) 1961.c. 62

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- (a) that the plaintiff is ordinarily resident out of the jurisdiction, or
- (b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so, or,
- (c) subject to paragraph (2), that the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated therein, or
- (d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,

then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceeding as it thinks just.

(2) The Court shall not require a plaintiff to give security by reason only of paragraph (1)(c) if he satisfies the Court that the failure to state his address or the mis-statement thereof was made innocently and without intention to deceive.

(3) The references in the foregoing paragraphs to a plaintiff and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counterclaim.

[E.r. 1]

#### **Manner of giving security**

2. Where an order is made requiring any party to give security for costs the security shall be given in such manner, at such times, and on such terms (if any), as the Court may direct.

[E.r. 2]

#### **Saving for statutory provision**

3. This Order is without prejudice to the provisions of any statutory provision which empowers the Court to require security to be given for the costs of any proceedings.

[E.r. 3]

## **ORDER 24**

### **DISCOVERY AND INSPECTION OF DOCUMENTS**

#### **Order for discovery**

1.—(1) Subject to the provisions of this rule and of rules 2 and 7, the Court may order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party.

(2) An order under this rule may be limited to such documents or classes of document only, or to such only of the matters in question in the cause or matter, as may be specified in the order.

[E.r. 3]

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### **Order for determination of issue, etc., before discovery**

2. Where on an application for an order under rule 1 it appears to the Court that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the Court may order that that issue or question be determined first.

[E.r. 4]

### **Form of list and affidavit**

3.—(1) A list of documents made in compliance with an order under rule 1 must be in, Form No. 22 in Appendix A, and must enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.

(2) If it is desired to claim that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit made as aforesaid verifying a list of documents must be in Form No. 23 in Appendix A.

[E.r. 5]

### **Defendant entitled to copy of co-defendant's list**

4.—(1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under any of the foregoing rules of this Order on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counterclaim by any other defendant to the counterclaim.

(2) A party required by virtue of paragraph (1) to supply a copy of a list of documents must supply it free of charge on a request made by the party entitled to it.

(3) Where in an action begun by originating summons the Court makes an order under rule 1 requiring a defendant to the action to serve a list of documents on the plaintiff, it may also order him to supply any other defendant to the action with a copy of that list.

(4) In this rule “list of documents” includes an affidavit verifying a list of documents.

[E.r. 6]

### **Order for discovery of particular documents**

5.—(1) Subject to rule 7, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it.

(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 1.

(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

[E.r. 7]

### **Application under section 31 or 32(1) of Administration of Justice Act 1970**

6.—(1) An application for an order under section 31 of the Administration of Justice Act 1970(33) for the disclosure of documents before the commencement of proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the summons.

(2) An application after the commencement of proceedings for an order under section 32(1) of the said Act for the disclosure of documents by a person who is not a party to the proceedings shall be made by summons, which must be served on that person personally and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by an affidavit which must—

- (a) in the case of a summons under paragraph (1), state the grounds on which it is alleged that the applicant and the person against whom the order is sought are likely to be parties to subsequent proceedings in the High Court in which a claim for personal injuries is likely to be made;
- (b) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise out of a claim for personal injuries made or likely to be made in the proceedings and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power.

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order under the said section 31 or 32(1) for the disclosure of documents may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just, and shall require the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order are, or at any time have been, in his possession, custody or power and, if not then in his possession, custody or power, when he parted with them and what has become of them.

(6) No person shall be compelled by virtue of such an order to produce any documents which he could not be compelled to produce—

- (a) in the case of a summons under paragraph (1), if the subsequent proceedings had already been begun, or
- (b) in the case of a summons under paragraph (2), if he had been served with a writ of subpoena duces tecum to produce the documents at the trial.

(7) In this rule “a claim for personal injuries” means a claim in respect of personal injuries to a person or in respect of a person's death.

(8) For the purposes of rules 9 and 10 an application for an order under the said section 31 or 32(1) shall be treated as a cause or matter between the applicant and the person against whom the order is sought.

[E.r. 7A]

### **Discovery to be ordered only if necessary**

7. On the hearing of an application for an order under rule 1, the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as

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it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

[E.r. 8]

#### **Inspection of documents referred to in list**

8. A party who has served a list of documents on any other party, in compliance with an order under rule 1, must allow the other party to inspect the documents referred to in the list (other than any which he objects to produce) and to take copies thereof and, accordingly, he must when he serves the list on the other party also serve on him a notice stating a time within 7 days after the service thereof at which the said documents may be inspected at a place specified in the notice.

[E.r. 9]

#### **Inspection of documents referred to in pleadings and affidavits**

9.—(1) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings or affidavits reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies thereof.

(2) The party on whom a notice is served under paragraph (1) must, within 4 days after service of the notice, serve on the party giving the notice a notice stating a time within 7 days after the service thereof at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice, and stating which (if any) of the documents he objects to produce and on what grounds.

[E.r. 10]

#### **Order for production for inspection**

10.—(1) If a party who is required by rule 8 to serve such a notice as is therein mentioned or who is served with a notice under rule 9(1)—

- (a) fails to serve a notice under rule 8 or, as the case may be, rule 9(2); or
- (b) objects to produce any document for inspection, or
- (c) offers inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or, as the case may be, there,

then, subject to rule 12(1), the Court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

(2) Without prejudice to paragraph (1), but subject to rule 12(1), the Court may, on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.

(3) An application for an order under paragraph (2) must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power of the other party and that they relate to a matter in question in the cause or matter.

[E.r. 11]



### **Order for production to Court**

11. At any stage of the proceedings in any cause or matter the Court may, subject to rule 12(1), order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the cause or matter and the Court may deal with the document when produced in such manner as it thinks fit.

[E.r. 12]

### **Production to be ordered only if necessary, etc.**

12.—(1) No order for the production of any documents for inspection or to the Court shall be made under any of the foregoing rules unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(2) Where on an application under this Order for production of any document for inspection or to the Court privilege from such production is claimed or objection is made to such production on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

[E.r. 13]

### **Production of business books**

13.—(1) Where production of any business books for inspection is applied for under any of the foregoing rules, the Court may, instead of ordering production of the original books for inspection, order a copy of any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books.

(2) Any such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations.

(3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the Court may order production of the book from which the copy was made.

[E.r. 14]

### **Document disclosure of which would be injurious to public interest: saving**

14. The foregoing provisions of this Order shall be without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

[E.r. 15]

### **Failure to comply with requirement for discovery, etc.**

15.—(1) If any party who is required by any of the foregoing rules, or by any order made thereunder, to make discovery of documents or to produce any documents for the purpose of inspection or any other purpose fails to comply with any provision of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with any such provision, to rule 10(1), the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) If any party against whom an order for discovery or production of documents is made fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal.

(3) Service on a party's solicitor of an order for discovery or production of documents made against that party shall be sufficient service to found an application for committal of the party

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disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom such an order made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

[E.r. 16]

#### **Revocation and variation of orders**

16. Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

[E.r. 17]

### ORDER 25

[No Order made]

### ORDER 26

#### INTERROGATORIES

#### **Discovery by interrogatories**

1.—(1) A party to any cause or matter may apply to the Court for an order—

- (a) giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter, and
- (b) requiring that other party to answer the interrogatories on affidavit within such period as may be specified in the order.

(2) A copy of the proposed interrogatories must be served with the summons by which the application for such leave is made.

(3) On the hearing of an application under this rule, the Court shall give leave as to such only of the interrogatories as it considers necessary either for disposing fairly of the cause or matter or for saving costs; and deciding whether to give leave the Court shall take into account any offer made by the party to be interrogated to give particulars or to make admissions or to produce documents relating to any matter in question.

(4) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) shall be disallowed notwithstanding that it might be admissible in oral cross-examination of a witness.

[E.r. 1]

#### **Interrogatories where party is a body of persons**

2. Where a party to a cause or matter is a body of persons, whether corporate or unincorporate, being a body which is empowered by law to sue or to be sued whether in its own name or in the name of an officer or other person, the Court may, on the application of any other party, make an order allowing him to serve interrogatories on such officer or member of the body as may be specified in the order.

[E.r. 2]

**Statement as to party etc., required to answer**

3. Where interrogatories are to be served on two or more parties or are required to be answered by an agent or servant of a party, a note at the end of the interrogatories shall state which of the interrogatories each party or, as the case may be, an agent or servant is required to answer, and which agent or servant.

[E.r. 3]

**Objection to answer on ground of privilege**

4. Where a person objects to answering any interrogatory on the ground of privilege he may take the objection in his affidavit in answer.

[E.r. 4]

**Insufficient answer**

5. If any person on whom interrogatories have been served answers any of them insufficiently, the Court may make an order requiring him to make a further answer, and either by affidavit or on oral examination as the Court may direct.

[E.r. 5]

**Failure to comply with order**

6.—(1) If a party against whom an order is made under rule 1 or 5 fails to comply with it, the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) If a party against whom an order is made under rule 1 or 5 fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal.

(3) Service on a party's solicitor of an order to answer interrogatories made against the party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom an order to answer interrogatories made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

[E.r. 6]

**Use of answers to interrogatories at trial**

7. A party may put in evidence at the trial of a cause or matter, or of any issue therein-, some only of the answers to interrogatories, or part only of such an answer, without putting in evidence the other answers or, as the case may be, the whole of that answer, but the Court may look at the whole of the answers and if of opinion that any other answer or other part of an answer is so connected with an answer or part thereof used in evidence that the one ought not to be so used without the other, the Court may direct that that other answer or part shall be put in evidence.

[E.r. 7]

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### **Revocation and variation of orders**

8. Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

[E.r. 8]

## **ORDER 27**

### **ADMISSIONS**

#### **Admission of case of other party**

1. Without prejudice to Order 18, rule 13, a party to a cause or matter may give notice, by his pleading or otherwise in writing, that he admits the whole or any part of the case of any other party.

[E.r. 1]

#### **Notice to admit facts**

2.—(1) A party to a cause or matter may not later than 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit, for the purpose of that cause or matter only, the facts specified in the notice.

(2) An admission made in compliance with a notice under this rule shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of which it was made or in favour of any person other than the person by whom the notice was given, and the Court may at any time allow a party to amend or withdraw an admission so made by him on such terms as may be just.

[E.r. 2]

#### **Judgment on admission of facts**

3. Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just.

An application for an order under this rule may be made by motion or summons.

[E.r. 3]

#### **Admission and production of documents specified in list of documents**

4.—(1) Subject to paragraph (2) and without prejudice to the right of a party to object to the admission in evidence of any document, a party who receives or who is served with a list of documents in pursuance of any provision of Order 24 shall, unless the Court otherwise orders, be deemed to admit—

- (a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been, and
- (b) that any document described therein as a copy is a true copy.

This paragraph does not apply to a document the authenticity of which the party has denied in his pleading.

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(2) If before the expiration of 21 days after inspection of the documents specified in a list of documents or after the time limited for inspection of those documents expires, whichever is the later, the party who receives or who is served with the list serves on the party whose list it is a notice stating, in relation to any document specified therein, that he does not admit the authenticity of that document and requires it to be proved at the trial, he shall not be deemed to make any admission in relation to that document under paragraph (1).

(3) A party to a cause or matter by whom a list of documents is served on any other party in pursuance of any provision of Order 24 shall be deemed to have been served by that other party with a notice requiring him to produce at the trial of the cause or matter such of the documents specified in the list as are in his possession, custody or power.

(4) The foregoing provisions of this rule apply in relation to an affidavit made in compliance with an order under Order 24, rule 5, as they apply in relation to a list of documents served in pursuance of any provision of that Order.

[E.r. 4]

#### **Notices to admit or produce documents**

5.—(1) Except where rule 4(1) applies, a party to a cause or matter may within 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit the authenticity of the documents specified in the notice.

(2) If a party on whom a notice under paragraph (1) is served desires to challenge the authenticity of any document therein specified he must, within 21 days after service of the notice, serve on the party by whom it was given a notice stating that he does not admit the authenticity of the document and requires it to be proved at the trial.

(3) A party who fails to give a notice of non-admission in accordance with paragraph (2) in relation to any document shall be deemed to have admitted the authenticity of that document unless the Court otherwise orders.

(4) Except where rule 4(3) applies, a party to a cause or matter may serve on any other party a notice requiring him to produce the documents specified in the notice at the trial of the cause or matter.

[E.r. 5]

## **ORDER 28**

### **ORIGINATING SUMMONS PROCEDURE**

#### **Application**

1. The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these Rules or by or under any statutory provision; and, subject as aforesaid, Order 32, rule 5, shall apply in relation to originating summonses as it applies in relation to other summonses.

[E.r. 1]

#### **Fixing times for attendance of parties before Court**

2.—(1) Where, in the case of an originating summons to which appearance is required to be entered, any defendant served with the summons has entered, or has within the time limited for appearing failed to enter, an appearance, the plaintiff may obtain an appointment for the attendance

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of the parties before the Court for the hearing of the summons, and a day and time for their attendance shall be fixed by a notice (in Form No. 10 in Appendix A) sealed by an officer of the appropriate office.

(2) A day and time for the attendance of the parties before the Court for the hearing of an originating summons to which appearance is not required, or for the hearing of an ex parte originating summons, may be fixed on the application of the plaintiff or applicant, as the case may be.

(3) Where, in respect of an originating summons to which an appearance is not required, an application for a day to be fixed under paragraph (2) is not made until after the originating summons has been issued, a day and time for the attendance of the parties before the Court for the hearing of the summons shall be fixed by a notice issued in accordance with the provisions of paragraph (1).

(4) Where a plaintiff fails to apply for an appointment under paragraph (1), any defendant may, with the leave of the Court, obtain an appointment in accordance with that paragraph provided that he has entered an appearance.

[E.r. 2]

#### **Notice of first hearing, etc.**

3.—(1) Not less than 4 clear days before the day fixed under rule 2 for the attendance of the parties before the Court for the hearing of an originating summons to which appearance is required to be entered, the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party who has entered an appearance and, if the first-mentioned party is a defendant, on the plaintiff.

(2) Not less than 4 clear days before the day fixed under rule 2 for the hearing of an originating summons to which appearance is not required, the plaintiff must serve the summons on every defendant and, where the day for the hearing is fixed after the summons is issued, a copy of the notice fixing it.

(3) Where the plaintiff intends to adduce evidence in support of an originating summons at the first hearing thereof he must do so by affidavit and, not less than 4 clear days before the hearing, serve a copy thereof on every defendant who has entered an appearance or, if the summons is one to which appearance is not required, on every defendant who has been served with the summons.

(4) Not less than 4 clear days before the day fixed for the hearing of an ex parte originating summons the applicant must file an affidavit in support of the summons.

[E.r. 3]

#### **Directions, etc., by Court**

4.—(1) The Court by whom an originating summons is heard may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require; but where the Court makes an order under this paragraph against a defendant who does not appear at the hearing, the order may be varied or revoked by a subsequent order of the Court on such terms as it thinks just.

(2) Unless on the first hearing of an originating summons the Court disposes of the summons altogether or orders the cause or matter begun by it to be remitted to a county court in accordance with the provisions of section 31 of the Act, or makes an order under rule 8, the Court shall give such directions as to further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.

(3) Without prejudice to the generality of paragraph (2); the Court shall, at as early a stage of the proceedings on the summons as appears to it to be practicable consider whether there is or may be a dispute as to fact and whether the just, expeditious and economical disposal of the proceedings can accordingly best be secured by hearing the summons on oral evidence or mainly on oral evidence

and, if it thinks fit, may order that no further evidence shall be filed and that the summons shall be heard on oral evidence or partly on oral evidence, and partly on affidavit evidence, with or without cross-examination of any of the deponents, as it may direct.

(4) Without prejudice to the generality of paragraph (2), and subject to paragraph (3), the Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination.

[E.r. 4]

### **Adjournment of summons**

5.—(1) The hearing of the summons by the Court may (if necessary) be adjourned from time to time, either generally or to a particular date, as may be appropriate, and the powers of the Court under rule 4 may be exercised at any resumed hearing.

(2) If the hearing of the summons is adjourned generally, the party on whose application the day for its hearing; was fixed under rule 2 may restore it to the list on 2 days' notice to all the other parties (except a defendant who has failed to enter an appearance or, if the summons is one to which an appearance is not required, has not been served with the summons), and any of those parties may restore it with the leave of the Court.

[E.r. 5]

### **Applications affecting party in default of appearance**

6. Where in a cause or matter begun by originating summons an application is made to the Court for an order affecting a party who has failed to enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

[E.r. 6]

### **Counterclaim by defendant**

7.—(1) A defendant to an action begun by originating summons who has entered an appearance to the summons and who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter (whenever and however arising) may make a counterclaim in the action in respect of that matter instead of bringing a separate action.

(2) A defendant who wishes to make a counterclaim under this rule must at the first or any resumed hearing of the originating summons by the Court but, in any case, at as early a stage in the proceedings as is practicable, inform the Court of the nature of his claim and, without prejudice to the powers of the Court under paragraph (3), the claim shall be made in such manner as the Court may direct under rule 4 or rule 8.

(3) If it appears on the application of a plaintiff against whom a counterclaim is made under this rule that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

[E.r. 7]

### **Continuation of proceedings as if cause or matter begun by writ**

8.—(1) Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that any affidavit shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

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(2) This rule applies notwithstanding that the cause or matter in question could not have been begun by writ.

(3) Any reference in these Rules to an action begun by writ shall, unless the context otherwise requires, be construed as including a reference to a cause or matter proceedings in which are ordered under this rule to continue as if the cause or matter had been so begun.

[E.r. 8]

### **Order for hearing or trial**

9.—(1) Except where the Court disposes of a cause or matter begun by originating summons in chambers or orders it to be remitted to a county court in accordance with the provisions of section 31 of the Act or makes an order in relation to it under rule 8 or some other provision of these rules, the Court shall, on being satisfied that the cause or matter is ready for determination, make an order for the hearing or trial thereof in accordance with this rule.

(2) Where the cause or matter is proceeding in the Chancery Division, the Court shall make such order as to the hearing of the cause or matter in court as may be appropriate; and where it makes such an order, it shall cause the originating summons, a copy thereof and every other document that will be required by the judge to be sent to the proper officer, who shall set down the cause or matter for hearing.

(3) The Court shall by order determine the mode of the trial, but any such order may be varied by a subsequent order of the Court made at or before the trial.

(4) Order 33, rule 4(2), and Order 34, rules 1 to 7, shall apply in relation to a cause or matter in the Queen's Bench Division begun by originating summons and to an order made therein under this rule as they apply in relation to an action in that Division begun by writ and to an order made therein under the said rule 4 and shall have effect accordingly with the necessary modifications.

[E.r. 9]

### **Failure to prosecute proceedings with despatch**

10.—(1) If the plaintiff in a cause or matter begun by originating summons makes default in complying with any order or direction of the Court as to the conduct of the proceedings, or if the Court is satisfied that the plaintiff in a cause or matter so begun is not prosecuting the proceedings with due despatch, the Court may order the cause or matter to be dismissed or may make such other order as may be just.

(2) Paragraph (1) shall, with any necessary modifications, apply in relation to a defendant by whom a counterclaim is made under rule 7 as it applies in relation to a plaintiff.

(3) Where, by virtue of an order made under rule 8, proceedings in a cause or matter begun by originating summons are to continue as if the cause or matter had been begun by writ, the foregoing provisions of this rule shall not apply in relation to the cause or matter after the making of the order.

[E.r. 10]

### **Abatement. etc., of action**

11. Order 34, rule 8 shall apply in relation to an action begun by originating summons as it applies in relation to an action begun by writ.

[E.r. 11]



## ORDER 29

### INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, INTERIM PAYMENTS, ETC.

#### I. INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, ETC.

##### **Application for injunction**

1.—(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be made ex parte on affidavit but, except as aforesaid, such application must be made by motion or summons.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

[E.r. 1]

##### **Detention, preservation, etc., of subject-matter of cause or matter**

2.—(1) On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into court or otherwise secured.

(4) An order under this rule may be made on such terms, if any, as the Court thinks just.

(5) An application for an order under this rule must be made by summons.

(6) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he enters an appearance.

[E.r. 2]

##### **Delivery up of goods under s.4 of Torts (Interference with Goods) Act 1977**

3.—(1) Without prejudice to rule 2, the Court may, on the application of any party to a cause or matter, make an order under section 4 of the Torts (Interference with Goods) Act 1977<sup>(34)</sup> for the delivery up of any goods which are the subject-matter of the cause or matter or as to which any question may arise therein.

(2) Paragraphs (2) and (3) of rule 1 shall have effect in relation to an application for such an order as they have effect in relation to an application for the grant of an injunction.

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[E.r. 2A]

**Power to order samples to be taken, etc.**

4.—(1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any cause or matter, the Court may, on the application of a party to the cause or matter, and on such terms, if any, as it thinks just, by order authorise or require any sample to be taken of any property which is the subject-matter of the cause or matter or as to which any question may arise therein, any observation to be made on such property or any experiment to be tried on or with such property.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

[E.r. 3]

**Sale of perishable property etc.**

5.—(1) The Court may, on the application of any party to a cause or matter, make an order for the sale by such person, in such manner and on such terms (if any) as may be specified in the order of any property (other than land) which is the subject-matter of the cause or matter or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any other good reason it is desirable to sell forthwith.

In this paragraph “land” includes any interest in, or right over, land.

(2) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

[E.r. 4]

**Order for early trial**

6. Where on the hearing of an application, made before the trial of a cause or matter, for an injunction or the appointment of a receiver or an order under rule 2, 4 or 5 it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits thereof for the purposes of the application, the Court may make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires.

Where the Court makes an order for early trial it shall by the order determine the place and mode of the trial.

[E.r. 5]

**Recovery of personal property subject to lien, etc.**

7. Where the plaintiff, or the defendant by way of counterclaim, claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleadings (if any) or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum (if any) for interest and costs as the Court may direct and that, upon such payment being made, the property claimed be given up to the party claiming it.

[E.r. 6]

### **Directions**

8. Where an application is made under any of the foregoing provisions of this Order, the Court may give directions as to the further proceedings in the cause or matter.

[E.r. 7]

### **Inspection, etc., of property under section 21 of Administration of Justice Act 1969 or section 32(2) of Administration of Justice Act 1970**

9.—(1) An application for an order under section 21(1) of the Administration of Justice Act 1969<sup>(35)</sup> in respect of property which may become the subject-matter of subsequent proceedings in the High Court or as to which any question may arise in any such proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the summons.

(2) An application after the commencement of proceedings for an order under section 32(2) of the Administration of Justice Act 1970<sup>(36)</sup> in respect of property which is not the property of or in the possession of any party to the proceedings shall be made by summons, which must be served on the person against whom the order is sought personally and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by affidavit which must specify or describe the property in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings or subsequent proceedings, that it is property which is or may become the subject-matter of the proceedings or as to which any question arises or may arise in the proceedings.

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order made under the said section 21 or 32(2) may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just.

(6) No such order shall be made if it appears to the Court—

(a) that compliance with the order, if made, would result in the disclosure of information relating to a secret process, discovery or invention not in issue in the proceedings, and

(b) that the application would have been refused on that ground if—

(i) in the case of a summons under paragraph (1), the subsequent proceedings had already been begun, or

(ii) in the case of a summons under paragraph (2); the person against whom the order is sought were a party to the proceedings.

[E.r. 7A]

### **Allowance of income of property pendente lite**

10. Where any real or personal property forms the subject-matter of any proceedings, and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties

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(35) 1969 c. 58

(36) 1970.c. 31

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who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all of such parties.

[E.r. 8]

## II. INTERIM PAYMENTS IN ACTIONS FOR PERSONAL INJURIES

### Interpretation of Part II

11. In this Part of this Order—

“interim payment”, in relation to a defendant, means a payment on account of any damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death which that defendant may be held liable to pay to or for the benefit of the plaintiff;

any reference to the plaintiff or defendant includes a reference to any person who for the purpose of the proceedings, acts as next friend to the plaintiff or guardian of the defendant.

[E.r. 9]

### Application for interim payment

12. In an action for personal injuries the plaintiff may, at any time after the writ has been served on a defendant and the time limited for him to appear has expired, apply to the Court for an order requiring that defendant to make an interim payment.

[E.r. 10]

### Manner in which application under rule 12 must be made

13.—(1) An application under rule 12 must be made by summons, stating the grounds on which the application is made, and be supported by an affidavit, which must—

- (a) verify the special damages, if any, claimed by the plaintiff up to the date of the application;
- (b) exhibit the hospital and medical reports, if any, relied upon by the plaintiff in support of the application; and
- (c) if the plaintiff's claim is made under the Fatal Accidents (Northern Ireland) Order 1977<sup>(37)</sup> contain the particulars mentioned in Article 4 of the Order.

(2) The summons and a copy of the affidavit in support and any exhibit referred to therein must be served on the defendant against whom the order is sought not less than 10 clear days before the return day.

(3) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown by reason of a change of circumstances.

[E.r. 11]

### Order for interim payment

14.—(1) If, on the hearing of an application under rule 12, the Court is satisfied—

- (a) that the defendant against whom the order is sought (in this paragraph referred to as “the respondent”) has admitted liability for the plaintiff's claim; or
  - (b) that the plaintiff has obtained judgment against the respondent for damages to be assessed;
- or

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<sup>(37)</sup> S.I. 1977 No. 1251 (N.I. 18)

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- (c) that, if the action proceeded to trial, the plaintiff would succeed in the action on the question of liability without any substantial reduction of the damages for fault on his part or on the part of any person in respect of whose injury or death the plaintiff's claim arises and would obtain judgment for damages against the respondent or, where there are two or more defendants, against any of them,

the Court may, if it thinks fit and subject to paragraph (2), order the respondent to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff.

(2) No order shall be made under paragraph (1) if it appears to the Court that the defendant, or, if there are two or more defendants, any of them, is not a person falling within one of the following categories, namely—

- (a) a person who is insured in respect of the plaintiff's claim;  
(b) a public authority;  
(c) a person whose means and resources are such as to enable him to make the interim payment.

(3) Subject to Order 80, rule 10, the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into court, and where the amount is paid into court, the Court may, on the ex parte application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.

(4) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.

[E.r. 12]

#### **Directions on application under rule 12**

15.—(1) Where an application is made under rule 12, the Court may give directions as to the further conduct of the action.

[E.r. 13]

#### **Non-disclosure of order for interim payment**

16. The fact that an order has been made under rule 14 shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing of the action or of any question or issue as to liability or damages until all questions of liability and the amount of the damages have been decided.

[E.r. 14]

#### **Payment into court**

17. Where, after making an interim payment pursuant to an order under rule 14, a defendant pays a sum of money into court under Order 22, rule 1, the notice of payment must state that the defendant has taken into account the interim payment.

[E.r. 15]

#### **Adjustment on final judgment or order**

18. Where a defendant has made an interim payment pursuant to an order under rule 13, the Court may, on giving or making a final judgment or order determining that defendant's liability to the plaintiff in the action, make any such order with respect to the interim payment as may be necessary for giving effect to the determination and in particular—

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- (a) an order for the repayment by the plaintiff of any sum by which the interim payment exceeds the amount which that defendant is liable to pay the plaintiff, or
- (b) an order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

[E.r. 16]

### **Interim order on counterclaim**

19. A defendant who makes a counterclaim for damages in respect of personal injuries to himself or any other person or in respect of a person's death may apply for an order requiring the plaintiff to make an interim payment and this Part of this Order shall apply accordingly with the necessary modifications.

[E.r. 17]

## **III. INTERIM PAYMENTS IN ACTIONS FOR POSSESSION OF LAND**

### **Order for interim payment**

20.—(1) Where in an action in which there is a claim for possession of land it appears to the Court that, in the event of a final judgment or order being given or made in favour of the plaintiff, the defendant would be held liable to pay to the plaintiff a sum of money in respect of the defendant's use and occupation of the land during the pendency of the action, the Court may, on the application of the plaintiff, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make a payment (in this rule referred to as an "interim payment") on account of that sum.

(2) No such order for an interim payment shall be made unless it appears to the Court that, even if a final judgment or order were given or made in favour of the defendant, he would still be under an obligation to pay the plaintiff for his use and occupation of the land, whether by way of rent, mesne profits or otherwise.

(3) An order under this rule may be for the payment of—

- (a) a sum not exceeding the amount which, if a final judgment or order were given or made in favour of the defendant, would be payable by him in respect of his use and occupation of the land up to the date of the order, or
- (b) periodical payments during the pendency of the action, or
- (c) a combination of both.

(4) Subject to Order 80, rule 10 the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into court; and when the amount is paid into court, the Court may, on the ex parte application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.

[E.r. 18]

### **Application for interim payment**

21.—(1) Subject to paragraph (2), an application for an order under rule 20 may be made—

- (a) in an action begun by writ, by summons issued at any time after a defence has been served or after the time for serving a defence has expired;
- (b) in an action begun by originating summons, in the originating summons or by summons returnable on or after the first hearing of the originating summons.

(2) A plaintiff who applies for summary judgment under Order 14, rule 2, may include in his summons an application for an order under rule 20 in the event of the defendant's being given leave to defend.

(3) An application for an order under rule 20 shall be supported by an affidavit, which must—

(i) verify the material facts on which the application is based;

(ii) state first the amount, expressed as a sum of money or a periodic payment, which, (if a final judgment or order were made or given in favour of the plaintiff), the defendant would, in the belief of the deponent, be held liable to pay in respect of his use and occupation of the land during the pendency of the action, and, secondly, whether the liability arises by virtue of a lease or tenancy agreement or otherwise;

(iii) state that, in the belief of the deponent, even if a final judgment or order were given or made in favour of the defendant, he would still be under an obligation to pay the plaintiff for use and occupation of the land during the pendency of the action;

(iv) state the amount claimed and how it is calculated.

(4) The summons and a copy of the affidavit in support must be served on the defendant against whom the order is sought not less than 4 clear days (or, if the order is sought in a summons for summary judgment under Order 14, 10 clear days) before the return day.

(5) Notwithstanding the making or refusal of an order for interim payment, a second or subsequent application may be made upon cause shown.

(6) An order for an interim payment may, on the application of a party to the action, be varied or discharged by the Court.

[E.r. 19]

#### **Directions on application under rule 21**

22. On hearing an application under rule 21, whether or not the Court makes an order for interim payment, the Court may give directions as to the further conduct of the action.

[E.r. 20]

#### **Interim payment in respect of counterclaim**

23. A defendant who makes a counterclaim for possession of land may apply for an order requiring the plaintiff to make an interim payment and this Part of this Order shall apply accordingly with the necessary modifications.

[E.r. 21]

## **ORDER 30**

### **RECEIVERS**

#### **Application for receiver and injunction**

1.—(1) An application for the appointment of a receiver may be made by summons or motion.

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.

(3) Where the applicant wishes to apply for the immediate grant of such an injunction, he may do so ex parte on affidavit.

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(4) The Court hearing an application under paragraph (3) may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of a summons for the appointment of the receiver and may require such a summons, returnable on such date as the Court may direct, to be issued.

[E.r. 1]

#### **Giving of security by receiver**

2.—(1) Where a judgment is given, or order made, directing the appointment of a receiver, then, unless the judgment or order otherwise directs, a person shall not be appointed receiver in accordance with the judgment or order until he has given security in accordance with this rule.

(2) Where by virtue of paragraph (1), or of any judgment or order appointing a person named therein to be receiver, a person is required to give security in accordance with this rule he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee or, if the amount for which the security is to be given does not exceed £1,000, by an undertaking.

(4) The guarantee or undertaking must be filed in the appropriate office.

[E.r. 2]

#### **Remuneration of receiver**

3. A person appointed receiver shall be allowed such proper remuneration, if any, as may be fixed by the Court.

[E.r. 3]

#### **Receiver's accounts**

4.—(1) A receiver must submit accounts to the Court at such intervals or on such dates as the Court may direct in order that they may be passed.

(2) Unless the Court otherwise directs, each account submitted by a receiver must be accompanied by an affidavit verifying it.

(3) The receiver's account and affidavit (if any) must be left at the appropriate office, and the plaintiff or party having the conduct of the cause or matter must thereupon obtain an appointment for the purpose of passing such account.

(4) The passing of a receiver's account must be certified by a master.

[E.r. 4]

#### **Payment of balance, etc., by receiver**

5. The days on which a receiver must pay into court the amounts shown by his account as due from him, or such part thereof as the Court may certify as proper to be paid in by him, shall be fixed by the Court.

[E.r. 5]

#### **Default by receiver**

6.—(1) Where a receiver fails to attend for the passing of any account of his, or fails to submit any account, make any affidavit or do any other thing which he is required to submit, make or do,



he and any or all of the parties to the cause or matter in which he was appointed may be required to attend in chambers to show cause for the failure, and the Court may, either in chambers or after adjournment into court, give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to paragraph (1), where a receiver fails to attend for the passing of any account of his or fails to submit any account or fails to pay into court on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay any such sum into court, charge him with interest at the rate of £5 per cent. per annum on that sum while in his possession as receiver.

[E.r. 6]

## ORDER 31

### SALES, ETC. OF LAND BY ORDER OF COURT: CONVEYANCING COUNSEL TO THE COURT

#### I. SALES, ETC. OF LAND BY ORDER OF COURT

##### **Power to order sale of land**

1. Where in any cause or matter in the Chancery Division relating to any land it appears necessary or expedient for the purposes of the cause or matter that the land or any part thereof should be sold, the Court may order that land or part to be sold, and any party bound by the order and in possession of that land or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.

In this Order “land” includes any interest in, or right over, land.

[E.r. 1]

##### **Manner of carrying out sale**

2.—(1) Where an order is made, whether in court or in chambers, directing any land to be sold, the Court may permit the party or person having the conduct of the sale to sell the land in such manner as he thinks fit, or may direct that the land be sold in such manner as the Court may either by the order or under paragraph (4) direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the Court shall direct.

(2) The party entitled to prosecute the order must, subject to paragraph 3, take out a summons to proceed with the order.

(3) Where an order for sale contains directions with regard to effecting the sale, the party entitled to prosecute the order shall not take out a summons under paragraph (2) unless and until he requires the further directions of the Court.

(4) On the hearing of the summons the Court may give such directions as it thinks fit for the purpose of effecting the sale, including, without prejudice to the generality of the foregoing words, directions—

- (a) appointing the party or person who is to have the conduct of the sale;
- (b) fixing the manner of sale, whether by contract conditional on the approval of the Court, private treaty, public auction, tender or some other manner;
- (c) fixing a reserve or minimum price;

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- (d) requiring payment of the purchase money into court or to trustees or other persons;
- (e) for settling the particulars and conditions of sale;
- (f) for obtaining evidence of the value of the property;
- (g) fixing the security (if any) to be given by the auctioneer, if the sale is to be by public auction, and the remuneration to be allowed him;
- (h) requiring an abstract of the title to be referred to conveyancing counsel to the Court or some other conveyancing counsel for his opinion thereon and to settle the particulars and conditions of sale.

[E.r. 2]

### **Certifying result of sale**

3.—(1) If either the Court has directed payment of the purchase money into court or the Court so directs, the result of a sale by order of the Court must be certified—

- (a) in the case of a sale by public auction, by the auctioneer who conducted the sale, and
- (b) in any other case, by the solicitor of the party or person having the conduct of the sale;

and the Court may require the certificate to be verified by the affidavit of the auctioneer or solicitor, as the case may be.

(2) The solicitor of the party or person having the conduct of the sale must file the certificate and affidavit (if any) at the Chancery Office.

[E.r. 3]

### **Mortgage, exchange or partition under order of the Court**

4. Rules 2 and 3 shall, so far as applicable and with the necessary modifications, apply in relation to the mortgage, exchange or partition of any land under an order of the Court as they apply in relation to the sale of any land under such an order.

[E.r. 4]

## **II. CONVEYANCING COUNSEL TO THE COURT**

### **Reference of matters to conveyancing counsel to Court**

5. The Court may refer to the conveyancing counsel to the Court—

- (a) any matter relating to the investigation of the title to any property with a view to an investment of money in the purchase or on mortgage thereof, or with a view to the sale thereof,
- (b) any matter relating to the settlement of a draft of a conveyance, mortgage, settlement or other instrument, and
- (c) any other matter it thinks fit,

and may act upon his opinion in the matter referred.

[E.r. 5]

### **Objection to conveyancing counsel's opinion**

6. Any party may object to the opinion given by any conveyancing counsel on a reference under rule 5, and if he does so the point in dispute shall be determined by the judge either in chambers or in court as he thinks fit.

[E.r. 6]

## ORDER 32

### APPLICATIONS AND PROCEEDINGS IN CHAMBERS

#### **Powers of judge in chambers**

1. A judge of the High Court may exercise in chambers all or any part of the jurisdiction vested in the High Court in all such causes and matters and in all such proceedings in any causes or matters as may be directed or authorised by these Rules or by or in pursuance of any statutory provision to be heard in chambers.

#### **Applications which must be made in chambers**

2. An application must be made in chambers where—
- (a) these Rules or any statutory provision require the application to be made in chambers or by summons; or
  - (b) the Court directs that the application be made in chambers; or
  - (c) the application is interlocutory and is not required or authorised by these Rules to be made by motion, except an application for an injunction or an application made in court at the trial or hearing of a cause or matter.

#### **Mode of making application**

3.—(1) Every application in chambers not made *ex parte* must be made by summons. A summons, other than an originating summons, shall be in Form No. 28 in Appendix A.

- (2) Any application made *ex parte* may be directed to be made by summons.

[E.r. 1]

#### **Issue of summons**

4.—(1) Issue of a summons by which an application in chambers is to be made takes place on its being sealed by an officer of the appropriate office.

- (2) A summons may not be amended after issue without the leave of the Court.
- (3) In this rule “the appropriate office” means—
- (a) in relation to a summons in a cause or matter in The Chancery Division, other than a summons in proceedings to which Order 102 applies, the Chancery Office;
  - (b) in relation to a summons in proceedings to which Order 102 applies, The Bankruptcy and Companies Office;
  - (c) in relation to a summons in a cause or matter in the Family Division the Probate and Matrimonial Office or the Office of Care and Protection, as the case may be;
  - (d) in relation to a summons in any other cause or matter, the Central Office.

[E.r. 2]

#### **Service of summons**

5. A summons asking only for the extension or abridgment of any period of time may be served on the day before the day specified in the summons for the hearing thereof, but except as aforesaid

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and unless the Court otherwise orders or any of these Rules otherwise provides, a summons must be served on every other party not less than 2 clear days before the day so specified.

[E.r. 3]

#### **Adjournment of hearing**

6.—(1) The hearing of a summons may be adjourned from time to time, either generally or to a particular date, as may be appropriate.

(2) If the hearing is adjourned generally, the party by whom the summons was taken out may restore it to the list on 2 clear days' notice to all the other parties on whom the summons was served.

[E.r. 4]

#### **Proceeding in absence of party failing to attend**

7.—(1) Where any party to a summons fails to attend on the first or any resumed hearing thereof, the Court may proceed in his absence if, having regard to the nature of the application, it thinks it expedient so to do.

(2) Before proceeding in the absence of any party the Court may require to be satisfied that the summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.

(3) Where the Court hearing a summons proceeded in the absence of a party, then, provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may re-hear the summons.

(4) Where an application made by summons has been dismissed without a hearing by reason of the failure of the party who took out the summons to attend the hearing, the Court, if satisfied that it is just to do so, may allow the summons to be restored to the list.

[E.r. 5]

#### **Order made ex parte may be set aside**

8. The Court may set aside an order made ex parte.

[E.r. 6]

#### **Subpoena for attendance of witness**

9.—(1) A writ of subpoena ad testificandum or a writ of subpoena duces tecum to compel the attendance of a witness for the purpose of proceedings in chambers may be issued out of the appropriate office, if the party who desires the attendance of the witness produces a note from a judge or master authorising the issue of the writ.

(2) Any master may give such a note or may direct that the application for it be made to the judge before whom the proceedings are to be heard.

[E.r. 7]

#### **Application to make order of House of Lords order of High Court**

10. An application to make an order of the House of Lords an order of the High Court may be made ex parte by affidavit to a master.

[E.r. 10]

### **Jurisdiction of masters**

11.—(1) A master shall have power to transact all such business and exercise all such jurisdiction as may be transacted and exercised by a judge in chambers, except in respect of the following matters and proceedings, that is to say—

- (a) matters relating to criminal proceedings;
- (b) matters relating to the liberty of the subject;
- (c) applications to review any taxation of costs.
- (d) applications under section 32 of the Act for leave to institute or continue legal proceedings;
- (e) applications for approval of transactions under the inherent jurisdiction of the court;
- (f) the granting of an injunction, except in the terms agreed by the parties to the proceedings in which the injunction is sought;
- (g) application to sanction a compromise, arrangement or transaction on behalf of a person under disability;
- (h) applications concerning charities;
- (i) applications under section 40 of the Trustee Act (Northern Ireland) 1958<sup>(38)</sup> for the appointment of a trustee in substitution for an existing trustee without his consent;
- (j) applications to authorise transactions relating to trust property under section 56 of the Trustee Act (Northern Ireland) 1958;
- (k) applications to vary trusts under section 57 of the Trustee Act (Northern Ireland) 1958;
- (l) applications by trustees to be relieved from personal liability under section 61 of the Trustee Act (Northern Ireland) 1958;
- (m) applications under section 111(2) of the Mental Health Act (Northern Ireland) 1961<sup>(39)</sup> to bring proceedings against a person;
- (n) any other matter or proceeding which by any of these Rules or under any general or special directions of the Lord Chief Justice or, in the case of the Master (Chancery) or the Master (Bankruptcy), the Chancery Judge, is required to be heard only by a judge.

(2) Where an originating summons raises for the determination of the Court a question as to the construction of a document or a question of law, nothing in paragraph (1) shall authorise a master to determine that question.

[E.rr. 11 & 14]

### **Reference of matter to judge**

12.—(1) A master may refer to a judge any matter which he thinks should properly be decided by a judge, and the judge may either dispose of the matter or, after or without hearing the parties, refer it back to the master, with such directions as he thinks fit.

(2) A matter referred under this rule shall, in accordance with the directions of the judge, either be listed for hearing by the judge or restored to the master's list.

[E.r. 12]

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<sup>(38)</sup> 1958 c. 23 (N.I.)

<sup>(39)</sup> 1961 c. 15 (N.I.)

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### **Power to direct hearing in court**

13.—(1) The judge in chambers may direct that any summons, application or appeal shall be heard in court or shall be adjourned into court to be so heard if he considers that by reason of its importance or for any other reason it should be so heard.

(2) Any matter heard in court by virtue of a direction under paragraph (1) may be adjourned from court into chambers.

[E.r. 13]

### **Masters may summon parties, etc.**

14.—(1) For the purpose of any proceedings before him, a master may

- (a) issue a summons requiring any party to the proceedings to attend before him,
- (b) at the request of any such party, issue a summons requiring any person to attend him as a witness,
- (c) require the production of documents, and
- (d) examine any party or witness either orally or on interrogatories.

(2) A summons under paragraph (1)(b) must be served personally on the person against whom it is issued.

(3) If a person refuses or fails to obey a summons duly served on him under this rule the master may make an order requiring that person to attend before him.

[E.r. 15]

### **Obtaining assistance of experts**

15. If the Court thinks it expedient in order to enable it better to determine any matter arising in proceedings in chambers, it may obtain the assistance of any person specially qualified to advise on that matter and may act upon his opinion.

[E.r. 16]

### **Adjournment into or from court**

16. The hearing of any summons or other application in chambers may be adjourned from chambers into court and subsequently from court into chambers.

[E.r. 18]

### **Disposal of matters in chambers**

17. The judge may by any judgment or order made in court in any proceedings direct that such matters (if any) in the proceedings as he may specify shall be disposed of in chambers.

[E.r. 19]

### **Papers for use of Court, etc.**

18. The original of any document which is to be used in evidence in proceedings in chambers must, if it is available, be brought in, and copies of any such document or of any part thereof shall not be made unless the Court directs that copies of that document or part be supplied for the use of the Court or be given to the other parties to the proceedings.

[E.r. 21]

TRIAL

## ORDER 33

### PLACE AND MODE OF TRIAL

#### **Place of trial**

1. Subject to any direction or order under section 58 of the Act, the place of trial of a cause or matter, or of any question or issue arising therein, shall be the Royal Courts of Justice.

[E.r. 1]

#### **Mode of trial**

2. Subject to the provisions of these Rules, a cause or matter, or any question or issue arising therein, may be tried before—

- (a) a judge alone, or
- (b) a judge with a jury, or
- (c) a judge with the assistance of assessors, or
- (d) a master.

[E.r. 2]

#### **Time, etc., of trial of questions or issues**

3. The Court may order any question or issue arising in a cause or matter, whether of fact or of law or partly of fact and partly of law, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

[E.r. 3]

#### **Determining the mode of trial**

4.—(1) A party setting down an action to which section 62(1) of the Act applies must specify the mode of trial which he requests.

(2) Where the party setting down such an action requests a trial without a jury, any other party may within 7 days after receiving a notice pursuant to Order 34, rule 7(1) lodge a request in the appropriate office that the action be tried with a jury and must within 24 hours after lodging such request send a copy thereof to every other party.

(3) A party setting down any other action must not request any mode of trial.

(4) Where trial with a jury has been requested under paragraph (1) or (2), any party (including the party who made the request) may apply either by motion on notice or at the trial of the action for an order that the action or any issue of fact therein be tried without a jury.

(5) Where the trial of an action with a jury has not been requested, any party (including the party who set down the action for trial) may apply by motion on notice for an order that the action or any issue of fact therein be tried with a jury.

(6) The Court may, upon application made under paragraph (4) or (5) and subject to section 62 of the Act, fix the mode of trial of any action or of any issue of fact therein and, only where it considers that the interest of justice so require, order that different questions of fact arising in the action be tried at different times or by different modes of trial.

(7) Nothing in this rule affects the provisions of Order 104, rule 11, as to actions for the infringement of a patent.

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#### **Trial with assistance of assessors**

5. A trial of a cause or matter with the assistance of assessors under section 61 of the Act shall take place in such manner and on such terms as the Court may direct.

[E.r. 6]

#### **Dismissal of action, etc.; after decision of preliminary issue**

6. If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment therein as may be just.

[E.r. 7]

## **ORDER 34**

### **SETTING DOWN FOR TRIAL ACTION BEGUN BY WRIT**

#### **Application and interpretation**

1. This Order applies to actions begun by writ and, accordingly, references in this Order to an action shall be construed as references to an action so begun.

[E.r. 1]

#### **Time for setting down action**

2.—(1) The plaintiff in any action shall within 6 weeks after the close of pleadings, or within the period fixed by an order of the Court, set down the action for trial.

(2) Where the plaintiff fails to set down the action for trial, the defendant may set it down or apply to the Court to dismiss the action for want of prosecution and, on the hearing of any such application, the Court may order the action to be dismissed accordingly or make such order as it thinks fit.

[E.r. 2]

#### **Setting down action for trial**

3. In order to set down an action for trial the party setting it down must deliver to the appropriate office a request in Form No. 34 of Appendix A that the action may be set down for trial.

#### **Lodging documents**

4.—(1) The party setting down an action for trial must deliver to the appropriate office two indexed bundles (one of which shall serve as the record and the other to be for the use of the judge) consisting of one copy of each of the following documents, that is to say—

- (a) the writ,
- (b) the pleadings (including any affidavits ordered to stand as pleadings), any request or order for particulars and the particulars given,
- (c) subject to Order 22, rule 7, any interlocutory orders, and
- (d) the requisite legal aid documents, if any.

(2) Each of the said bundles must be bound up and indexed in the proper chronological order and the bundle which is to serve as the record must be stamped with the stamp denoting payment



of the fee payable on setting down the action and have indorsed thereon the names, addresses and telephone numbers of the solicitors for the parties or, in the case of a party who has no solicitor, of the party himself.

(3) Where a third party notice has been issued under Order 16, the party issuing the notice (whether with or without leave) must, as soon as practicable after receiving notice that the action has been set down for trial or on setting down the action for trial (unless the third party proceedings have been disposed of or abandoned), deliver to the appropriate office two bundles prepared in accordance with paragraph (1) each consisting of of copy of the third party notice and all documents in the third party proceedings corresponding to those specified in paragraph (1).

(4) Where a new trial becomes necessary in any action, the procedure for setting down the action for the new trial shall be that specified in the foregoing provisions except that the bundle which is to serve as the record must be bespoken from the appropriate office and must include the order for a new trial.

(5) In this rule “the requisite legal aid documents” means any documents which are required by regulations under Part I of the Legal Aid and Advice Act (Northern Ireland) 1965(40) to be included in the bundle for use at the trial.

[E.r. 3]

#### **Directions relating to lists**

5. Nothing in this Order shall prejudice any powers of the Lord Chief Justice to give directions—
- (a) providing for the keeping and publication of lists of actions for hearing;
  - (b) providing for the determination of a date for the trial of any action which has been set down or a date before which the trial thereof is not to take place; and
  - (c) as to the making of applications (whether to the Court or a court officer) to fix, vacate or alter any such date, and, in particular, requiring any such application to be supported by an estimate of the length of the trial and any other relevant information.

[E.r. 4]

#### **Further provisions as to lists**

6. At any time after an action has been set down for trial and before it is tried, the Court may require the parties to furnish the Court or court officer, by personal attendance or otherwise, with such information as may be necessary to show whether the action is ready for trial, and if any party fails to comply with any such requirement, the Court may—

- (a) of its own motion, on 7 days' notice to the parties, direct that the action be removed from the list of actions for hearing;
- (b) on the application of any party, dismiss the action for want of prosecution or strike out the defence or counterclaim or make such other order as the Court thinks fit.

Where a direction is given under sub-paragraph (a), the Court may subsequently direct the action to be restored to the list on such terms, if any, as it thinks fit.

[E.r. 5]

#### **Notification of setting down**

7.—(1) A party to an action who sets it down for trial must, within 24 hours after doing so, give notice in Form No. 35 of Appendix A to the other parties to the action that he has done so.

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(40) 1965 c. 8 (N.I.)

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(2) It shall be the duty of all parties to an action set down for trial to furnish without delay to the officer who keeps the lists of actions for hearing all available information as to the action being or being likely to be settled, and, if the action is settled or withdrawn, to notify that officer of the fact without delay.

(3) In performance of the duty imposed by paragraph (2), a plaintiff who gives notice of acceptance of a payment into court in accordance with Order 22, rule 3(1), shall at the same time lodge a copy of the notice with the officer mentioned in that paragraph.

[E.r. 8]

#### **Abatement, etc., of action**

8.—(1) Where after an action has been set down for trial the action becomes abated, or the interest or liability of any party to the action is assigned or transmitted to or devolves on some other person, the solicitor for the plaintiff or other party having the conduct of the action must, as soon as practicable after becoming aware of it, certify the abatement or change of interest or liability and send the certificate to the proper officer, and that officer shall cause the appropriate entry to be made in the list of actions set down for trial.

(2) Where in any such list an action stands for one year marked as abated or ordered to stand over generally, the action shall on the expiration of that year be struck out of the list unless, in the case of an action ordered to stand over generally, the order otherwise provides.

[E.r. 9]

## ORDER 35

### PROCEEDINGS AT TRIAL

#### **Failure to appear by both parties or one of them**

1.—(1) If, when the trial of an action is called on, neither party appears, the action may be struck out of the list, without prejudice, however, to the restoration thereof, on the direction of a judge.

(2) If, when the trial of an action is called on, one party does not appear, the judge may proceed with the trial of the action or any counterclaim in the absence of that party.

[E.r. 1]

#### **Judgment, etc. given in absence of party may be set aside**

2.—(1) Any judgment, order or verdict obtained where one party does not appear at the trial may be set aside by the Court, on the application of that party, on such terms as it thinks just.

(2) An application under this rule must be made within 7 days after the trial.

[E.r. 2]

#### **Adjournment of trial**

3. The judge may, if he thinks it expedient in the interest of justice, adjourn a trial for such time, and to such place and upon such terms, if any, as he thinks fit.

[E.r. 3]

### **Order of speeches**

4.—(1) The judge before whom an action is tried (whether with or without a jury) may give directions as to the party to begin and the order of speeches at the trial, and, subject to any such directions, the party to begin and the order of speeches shall be that provided by this rule.

(2) Subject to paragraph (6), the plaintiff shall begin by opening his case.

(3) If the defendant does not adduce evidence, the plaintiff may, after the evidence on his behalf has been given, make a second speech closing his case and the defendant shall then state his case.

(4) If the defendant does adduce evidence, he may, after any evidence on behalf of the plaintiff has been given, open his case and, after the evidence on his behalf has been given, make a second speech closing his case, and at the close of the defendant's case the plaintiff may make a speech in reply;

(5) Where there are two or more defendants who appear separately or are separately represented, then—

(a) if none of them elects to adduce evidence, each of them shall state his case in the order in which his name appears on the record;

(b) if each of them elects to adduce evidence, each of them may open his case and the evidence on behalf of each of them shall be given in the order aforesaid and the speech of each of them closing his case shall be made in that order after the evidence on behalf of all the defendants has been given;

(c) if some of them adduce evidence and some do not, those who do shall state their case in the order aforesaid after the speech of the plaintiff in reply to the other defendants.

(6) Where the burden of proof of all the issues in the action lies on the defendant or, where there are two or more defendants and they appear separately or are separately represented, on one of the defendants, the defendant or that defendant, as the case may be, shall begin, and in that case paragraphs (2), (3) and (4) shall have effect in relation to, and as between, him and the plaintiff as if for references to the plaintiff and the defendant there were substituted references to the defendant and the plaintiff respectively.

(7) Where, as between the plaintiff and any defendant, the party who would, but for this paragraph, be entitled to make the final speech raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposing party may make a further speech in reply, but only in relation to that point of law or that authority, as the case may be.

(8) For the purposes of this rule a party shall be deemed to adduce evidence if he puts in a document whether in the course of cross-examination or otherwise.

[E.r. 7]

### **Inspection by judge or jury**

5.—(1) The judge by whom any cause or matter is tried may inspect any place or thing with respect to which any question arises in the cause or matter;

(2) Where a cause or matter is tried with a jury and the judge inspects any place or thing under paragraph (1), he may authorise the jury to inspect it also.

[E.r. 8]

### **Death of party before giving of judgment**

6. Where a party to any action dies after the verdict or finding of the issues of fact and before judgment is given-, judgment may be given notwithstanding the death, but the foregoing provision shall not be taken as affecting the power of the judge to make an order under Order 15, rule 7(2), before giving judgment.

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[E.r. 9]

### **Record to be kept by officer**

7. The officer present in court shall at the trial or as soon as practicable thereafter, enter in a register to be kept for that purpose, the following—

- (i) the record number of the action;
- (ii) the date of the trial;
- (iii) the name of the trial judge and whether the trial was with or without a jury;
- (iv) the title of the action;
- (v) the names of solicitor and counsel;
- (vi) the names of any witnesses;
- (vii) the questions asked of and the answers given by the jury where the trial was with a jury;
- (viii) particulars of the judgment and of all orders, directions and certificates (if any);
- (ix) a note of the days on which the trial was held and the time spent at trial during each day on which the trial was held.

### **List of exhibits**

8.—(1) The proper officer shall take charge of every document or object put in as an exhibit during the trial of any action and shall mark or label every exhibit with a letter indicating the party by whom it is put in and shall number each party's exhibits consecutively.

(2) The proper officer shall cause a list to be made of all the exhibits in the action, and any party may, on payment of the prescribed fee, have an office copy of that list.

(3) The list of exhibits when completed shall be attached to the pleadings and shall form part of the record of the action.

(4) For the purpose of this rule a bundle of documents may be treated and counted as one exhibit

[E.r. 11]

### **Custody of exhibit after trial**

9. It shall be the duty of every party to an action who has put in any exhibit to apply to the proper officer immediately after the trial for the return of the exhibit, and, so far as is practicable regard being had to the nature of the exhibit, to keep it duly marked and labelled as before, so that in the event of an appeal to the Court of Appeal or the House of Lords, he may be able to produce the exhibit so marked and labelled at the hearing of the appeal in case he is required by the Court of Appeal or the House of Lords to do so.

[E.r. 12]

### **Impounded documents**

10.—(1) Documents impounded by order of the Court shall not be delivered out of the custody of the Court except in compliance with an order made by a judge on an application made by motion: Provided that where the Attorney General for Northern Ireland or the Director of Public Prosecutions for Northern Ireland makes a written request in that behalf, documents so impounded shall be delivered into his custody.

(2) Documents impounded by order of the Court, while in the custody of the Court, shall not be inspected except by a person authorised to do so by an order signed by a judge.

[E.r. 13]

## ORDER 36

### TRIALS BEFORE MASTERS AND REFEREES UNDER s.20 OF ARBITRATION ACT (NORTHERN IRELAND) 1937

#### **Power to order trial before master or referee**

1. In any cause or matter, other than a criminal proceeding by the Crown, if the question in dispute consists wholly or in part of matter of account, the Court may at any time pursuant to section 20 of the Arbitration Act (Northern Ireland) 1937(41) order the whole cause or matter or any question or issue of fact arising therein to be tried, without prejudice to Orders 43 and 44, before a master or before a referee or arbitrator respectively agreed on by the parties (all of whom are hereinafter referred to as the “referee”).

[E.r. 1]

#### **Procedure on reference**

2. Where an order for the trial of any question or issue of fact is made under rule 1, unless the court otherwise orders, further consideration of the cause or matter shall stand adjourned until the receipt of the referee's report.

[E.r. 2]

#### **Lodgment of order under rule 1**

3. Every order made under rule 1 shall forthwith be lodged with the referee who shall within 14 days thereafter fix the date of the trial after consultation with the parties or their solicitors.

#### **Report on reference**

4.—(1) The report made by a referee in pursuance of a reference under rule 1 shall be made to the Court and notice thereof served on the parties to the reference.

(2) The referee may in his report submit any question arising therein for the decision of the Court or make a special statement of facts from which the Court may draw such inferences as it thinks fit.

(3) On the receipt of the referee's report, the Court may—

- (a) adopt the report in whole or in part;
- (b) vary the report;
- (c) require an explanation from him;
- (d) remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other referee; or
- (e) decide the question or issue originally referred to him on the evidence taken before him, either with or without additional evidence.

(4) When the report of the referee has been made, an application to vary the report or remit the whole or any part of the question or issue originally referred may be made on the hearing of the Court

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(41) 1937 c. 8 (N.I.)

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of the further consideration of the cause or matter, after giving not less than 4 days notice thereof, and any other application with respect to the report may be made on that hearing without notice.

(5) Where on a reference under rule 1 the Court orders that the further consideration of the cause or matter in question shall not stand adjourned until the receipt of the referee's report, the order may contain directions with respect to the proceedings on the receipt of the report, and the foregoing provisions of this rule shall have effect subject to any such directions.

[E.r. 3]

### **Powers; etc. of referee**

5.—(1) Subject to any directions contained in the order referring any business to a referee—

- (a) the referee shall for the purpose of disposing of any cause or matter (including any interlocutory application therein) or any other business referred to him have the same jurisdiction, powers and duties (excluding the power of committal) as a judge, exercisable or, as the case may be, to be performed as nearly as circumstances admit in the like cases, in the like manner and subject to the like limitations; and
- (b) every trial and all other proceedings before a referee shall, as nearly as circumstances admit, be conducted in the like manner as the like proceedings before a judge.

(2) Without prejudice to the generality of paragraph (1), but subject to any such directions as are mentioned therein, a referee before whom any cause or matter is tried shall have the like powers as the Court with respect to claims relating to or connected with the original subject-matter of the cause or matter by any party thereto against any other person, and Order 15, rule 5(2) and Order 16 shall with any necessary modifications apply in relation to any such claim accordingly.

(3) A referee may hold any trial or any other proceeding before him at any place which appears to him to be convenient and may adjourn the proceedings from place to place as he thinks fit.

[E.r. 4]

## **ORDER 37**

### **ASSESSMENT OF DAMAGES**

#### **Assessment of damages by a master**

1.—(1) Where judgment is given for damages to be assessed and no provision is made by the judgment as to how they are to be assessed, the damages shall, subject to the provisions of these Rules, be assessed by a master and the party entitled to the benefit of the judgment may, after obtaining the necessary appointment from the master, and at least 7 days before the date of the appointment, serving notice of the appointment on the party against whom the judgment is given, proceed accordingly.

(2) Notwithstanding anything in Order 65, rule 9, a notice under this rule must be served on the party against whom the judgment is given.

(3) Without prejudice to the powers of a master of the Chancery Division under Order 32, rule 14, the attendance of witnesses and the production of documents before the master in proceedings under this Order may be compelled by writ of subpoena, and the provisions of Order 35 shall, with the necessary adaptations, apply in relation to those proceedings as they apply in relation to proceedings at a trial.

[E.r. 1]

### **Certificate or judgment for amount of damages**

2. Where in pursuance of this Order or otherwise damages are assessed by a master—
- (a) in the Chancery Division the Master shall certify the amount of the damages and the provisions of Order 44 rules 21, 22 and 23 shall apply to the certificate;
  - (b) in the Queen's Bench Division the Master shall give final judgment for the amount of the damages so assessed.

[E.r. 2]

### **Default judgment against some but not all defendants**

3. Where any such judgment as is mentioned in rule 1 is given in default of appearance or in default of defence, and the action proceeds against other defendants, the damages under the judgment shall be assessed at the trial unless the Court otherwise orders.

[E.r. 3]

### **Power to order assessment by master, etc.**

4.—(1) Where judgment is given for damages to be assessed, the Court may subject to section 62 of the Act of its own motion or, upon application by motion on notice, order—

- (a) that the damages shall be assessed by a master, or
- (b) that the action shall proceed to trial before a judge as respects the damages.

(2) Where the Court orders that the action shall proceed to trial, it may make such orders and give such directions as it thinks just.

[E.r. 4]

### **Assessment of value**

5. The foregoing provisions of this Order shall apply in relation to a judgment for the value of goods to be assessed, with or without damages to be assessed, as they apply to a judgment for damages to be assessed, and references in those provisions to the assessment of damages shall be construed accordingly.

[E.r. 5]

### **Assessment of damages to time of assessment**

6. Where damages are to be assessed (whether under this Order or otherwise) in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

[E.r. 6]

## ORDER 38

### EVIDENCE

#### I. GENERAL RULES

##### **General rule : witness to be examined orally**

1. Subject to the provisions of these Rules and of the Civil Evidence Act (Northern Ireland) 1971(42) and any other statutory provision relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of witnesses orally and in open court.

[E.r. 1]

##### **Evidence by affidavit**

2.—(1) The Court may, at or before the trial of an action begun by writ, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order.

(2) An order under paragraph (1) may be made on such terms as to the filing and giving of copies of the affidavits and as to the production of the deponents for cross-examination as the Court thinks fit but, subject to any such terms and to any subsequent order of the Court, the deponents shall not be subject to cross-examination and need not attend the trial for the purpose.

(3) In any cause or matter begun by originating summons, originating motion or petition, and on any application made by summons or motion, evidence may be given by affidavit unless in the case of any such cause, matter or application any provision of these Rules otherwise provides or the Court otherwise directs, but the Court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence without the leave of the Court.

[E.r. 2]

##### **Evidence of particular facts**

3.—(1) Without prejudice to rule 2, the Court may, at or before the trial of any action, order that evidence of any particular fact shall be given at the trial in such manner as may be specified by the order.

(2) The power conferred by paragraph (1) extends in particular to ordering that evidence of any particular fact may be given at the trial—

- (a) by statement on oath of information or belief, or
- (b) by the production of documents or entries in books, or
- (c) by copies of documents or entries in books, or
- (d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact.

[E.r. 3]

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(42) 1971 c. 36 (N.I.)



### **Revocation or variation of orders under rule 2 or 3**

4. Any order under rule 2 or 3 (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the Court made at or before the trial.

[E.r. 6]

### **Evidence of finding on foreign law**

5.—(1) A party to any cause or matter who intends to adduce in evidence a finding or decision on a question of foreign law by virtue of section 114(4) of the Act shall, not later than 21 days before the date of trial or within such other period as the Court may specify, in accordance with section 114(5) or the Act, serve written notice that he intends to do so on each of the other parties to the proceedings or his solicitor.

(2) The notice shall specify the question on which the finding or decision was given or made and specify the document in which it is reported or recorded in citable form.

(3) In any cause or matter in which evidence may be given by affidavit, an affidavit specifying the matters contained in paragraph (2) shall constitute notice under paragraph (1) if served within the period mentioned in that paragraph.

[E.r. 7]

### **Application to trials of issues, references, etc.**

6. The foregoing rules of this Order shall apply to trials of issues or questions of fact or law, references, inquiries and assessments of damages as they apply to the trial of actions.

[E.r. 8]

### **Depositions: when receivable in evidence at trial**

7.—(1) No deposition taken in any cause or matter shall be received in evidence at the trial of the cause or matter unless—

- (a) the deposition was taken in pursuance of an order under Order 39, rule 1, and
- (b) either the party against whom the evidence is offered consents or it is proved to the satisfaction of the Court that the deponent is dead, or beyond the jurisdiction of the Court or unable from sickness or other infirmity to attend the trial.

(2) A party intending to use any deposition in evidence at the trial of a cause or matter must, a reasonable time before the trial, give notice of his intention to do so to the other party.

(3) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person.

[E.r. 9]

### **Court documents admissible or receivable in evidence**

8.—(1) Office copies of writs, records, pleadings and documents filed in the High Court shall be admissible in evidence in any cause or matter and between all parties to the same extent as the original would be admissible.

(2) Without prejudice to the provisions of any statutory provision, every document purporting to be sealed with the seal of the Supreme Court shall be received in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in, or issued out of, an office of the Supreme Court shall be deemed to be an office copy of that document without further proof unless the contrary is shown.

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[E.r. 10]

**Evidence of consent of new trustee to act**

9. A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person shall be evidence of such consent.

[E.r. 11]

**Evidence at trial; may be used in subsequent proceedings**

10. Any evidence taken at the trial of any cause or matter may be used in any subsequent proceedings in that cause or matter.

[E.r. 12]

**Order to produce document at proceeding other than trial**

11.—(1) At any stage in a cause or matter the Court may order any person to attend any proceedings in the cause or matter and produce any document, to be specified or described in the order, the production of which appears to the Court to be necessary for the purpose of that proceeding.

(2) No person shall be compelled by an order under paragraph (1) to produce any document at a proceeding in a cause or matter which he could not be compelled to produce at the trial of that cause or matter.

[E.r. 13]

**II. WRITS OF SUBPOENA**

**Form and issue of writ of subpoena**

12.—(1) A writ of subpoena must be in Form 24, 25 or 26 in Appendix A. whichever is appropriate.

(2) Issue of a writ of subpoena takes place upon its being sealed by an officer of the appropriate office.

(3) Before a writ of subpoena is issued a praecipe for the issue of the writ must be filed in the office out of which the writ is to issue; and the praecipe must contain the name and address of the party issuing the writ, if he is acting in person, or the name or firm and business address of that party's solicitor.

[E.r. 14]

**More than one name may be included in one writ of subpoena**

13. The names of two or more persons may be included in one writ of subpoena ad testificandum.

[E.r. 15]

**Amendment of writ of subpoena**

14. Where there is a mistake in any person's name or address in a writ of subpoena, then, if the writ has not been served, the party by whom the writ was issued may have the writ re-sealed in correct form by filing a second praecipe under rule 12(5) indorsed with the words "Amended and re-sealed".

[E.r. 16]

### **Service of writ of subpoena**

15. A writ of subpoena must be served personally and, subject to rule 17, the service shall not be valid unless effected within 12 weeks after the date of issue of the writ.

[E.r. 17]

### **Duration of writ of subpoena**

16. Subject to rule 17, a writ of subpoena continues to have effect until the conclusion of the trial at which the attendance of the witness is required.

[E.r. 18]

### **Writ of subpoena in aid of inferior court or tribunal**

17.—(1) The office of the Supreme Court out of which a writ of subpoena ad testificandum or a writ of subpoena duces tecum in aid of an inferior court or tribunal may be issued is the Crown Office, and no order of the Court for the issue of such a writ is necessary.

(2) A writ of subpoena in aid of an inferior court or tribunal continues to have effect until the disposal of the proceedings before that court or tribunal at which the attendance of the witness is required.

(3) A writ of subpoena issued in aid of an inferior court or tribunal must be served personally.

(4) Unless a writ of subpoena issued in aid of an inferior court or tribunal is duly served on the person to whom it is directed not less than 4 days, or such other period as the Court may fix, before the day on which the attendance of that person before the court or tribunal is required by the writ, that person shall not be liable to any penalty or process for failing to obey the writ.

(5) An application to set aside a writ of subpoena issued in aid of an inferior court or tribunal may be heard by the Master (Queen's Bench and Appeals).

[E.r. 19]

## **III. EVIDENCE ADMISSIBLE UNDER PART I OF THE CIVIL EVIDENCE ACT (NORTHERN IRELAND) 1971**

### **Interpretation and application**

18.—(1) In this Part of this Order “the Civil Evidence Act” means the Civil Evidence Act (Northern Ireland) 1971.

(2) Any expressions used in this Part of this Order and in Part I of the Civil Evidence Act have the same meanings in this Part of this Order as they have in the said Part I.

(3) This Part of this Order shall apply in relation to the trial or hearing of an issue or question arising in a cause or matter, and to a reference, inquiry and assessment of damages, as it applies in relation to the trial or hearing of a cause or matter.

[E.r. 20]

### **Notice of intention to give in evidence statement under section 1 or 2 of the Civil Evidence Act**

19.—(1) Subject to the provisions of this rule, a party to a cause or matter who desires to give in evidence at the trial or hearing of the cause or matter any statement contained in a document which is admissible in evidence by virtue of section 1 or 2 of the Civil Evidence Act must not later than 21 days before the date of trial serve on every other party to the cause or matter notice of his desire

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to do so, and the notice must comply with the provisions of rule 20 or 21, as the circumstances of the case require.

(2) Paragraph (1) shall not apply in relation to any statement contained in a document which any party to a probate action desires to give in evidence at the trial of that action and which is alleged to have been made by the deceased person whose estate is the subject of the action.

(3) Where by virtue of any provision of these rules or of any order or direction of the Court the evidence in any proceedings is to be given by affidavit then paragraph (1) shall not apply in relation to any statement contained in a document which any party to the proceedings desires to have included in any affidavit to be used on his behalf in the proceedings but nothing in this paragraph shall affect the operation of Order 41, rule 5, or the powers of the Court under this Order.

(4) Unless the Court otherwise directs, paragraph (1) shall not apply in relation to any statement contained in a document which is admissible by virtue of section 1 or 2 of the Civil Evidence Act and which an applicant for judgment in default of appearance in admiralty proceedings under Order 75, rule 21, desires to give in evidence at the hearing.

[E.r. 21]

**Statement admissible by virtue of section 1 of the Civil Evidence Act: contents of notice**

20.—(1) If the statement contained in a document is admissible by virtue of section 1 of the Civil Evidence Act, the notice must have annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and must contain—

(a) particulars of—

- (i) the person by whom the record containing the statement was compiled;
- (ii) the person who originally supplied information from which the record was compiled; and
- (iii) any other person through whom that information was supplied to the compiler of that record;

and, in the case of any such person as is referred to in (i) or (iii) above, a description of the duty under which that person was acting when compiling that record or supplying information from which that record was compiled, as the case may be;

- (b) if not apparent on the face of the document annexed to the notice, a description of the nature of the record which, or part of which, contains the statement; and
- (c) particulars of the time, place and circumstances at or in which that record or part was compiled.

(2) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 22, the notice must contain a statement to that effect specifying the reason relied on.

[E.r. 23]

**Statement admissible by virtue of section 2 of the Civil Evidence Act: contents of notice**

21.—(1) If the statement is contained in a document produced by a computer and is admissible by virtue of section 2 of the Civil Evidence Act, the notice must have annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and must contain particulars of—

- (a) a person who occupied a responsible position in relation to the management of the relevant activities for the purpose of which the computer was used regularly during the material period to store or process information;

- (b) a person who at the material time occupied such a position in relation to the supply of information to the computer, being information which is reproduced in the statement or information from which the information contained in the statement is derived;
- (c) a person who occupied such a position in relation to the operation of the computer during the material period;

and where there are two or more persons who fall within any of the foregoing sub-paragraphs and some only of those persons are at the date of service of the notice capable of being called as witnesses at the trial or hearing, the person particulars of whom are to be contained in the notice must be such one of those persons as is at that date so capable.

(2) The notice must also state whether the computer was operating properly throughout the material period and, if not, whether any respect in which it was not operating properly or was out of operation during any part of that period was such as to affect the production of the document in which the statement is contained or the accuracy of its contents.

(3) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 22, the notice must contain a statement to that effect specifying the reason relied on.

[E.r. 24]

#### **Reasons for not calling a person as a witness**

22. The reasons referred to in rules 20(2) and 21(3) are that the person in question is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as a witness or that despite the exercise of reasonable diligence it has not been possible to identify or find him or that he cannot reasonably be expected to have any recollection of matters relevant to the accuracy or otherwise of the statement to which the notice relates.

[E.r. 25]

#### **Counter-notice requiring person to be called as a witness**

23.—(1) Subject to paragraphs (2) and (3), any party to a cause or matter on whom a notice under rule 19 is served may within 21 days after service of the notice on him serve on the party who gave the notice a counter-notice requiring that party to call as a witness at the trial or hearing of the cause or matter any person (naming him) particulars of whom are contained in the notice.

(2) Where any notice under rule 19 contains a statement that any person particulars of whom are contained in the notice cannot or should not be called as a witness for the reason specified therein, a party shall not be entitled to serve a counter-notice under this rule requiring that person to be called as a witness at the trial or hearing of the cause or matter unless he contends that that person can or, as the case may be, should be called, and in that case he must include in his counter-notice a statement to that effect.

(3) Where a statement to which a notice under rule 19 relates is one to which rule 25 applies, no party on whom the notice is served shall be entitled to serve a counter-notice under this rule in relation to that statement, but the foregoing provision is without prejudice to the right of any party to apply to the Court under rule 25 for directions with respect to the admissibility of that statement.

(4) If any party to a cause or matter by whom a notice under rule 19 is served fails to comply with a counter-notice duly served on him under this rule, then, unless any of the reasons specified in rule 22 applies in relation to the person named in the counter-notice, and without prejudice to the powers of the Court under rule 26, the statement to which the notice under rule 19 relates shall not be admissible at the trial or hearing of the cause or matter as evidence of any fact stated therein by virtue of section 1 or 2 of the Civil Evidence Act, as the case may be.

[E.r. 26]

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### **Determination of question whether a person can or should be called as a witness**

24.—(1) Where in any cause or matter a question arises whether any of the reasons specified in rule 22 applies in relation to a person particulars of whom are contained in a notice under rule 19, the Court may, on the application by summons of any party to the cause or matter, determine that question before the trial or hearing of the cause or matter or give directions for it to be determined before the trial or hearing and for the manner in which it is to be so determined.

(2) Unless the Court otherwise directs, the summons by which an application under paragraph (1) is made must be served by the party making the application on every other party to the cause or matter.

(3) Where any such question as is referred to in paragraph (1) has been determined under or by virtue of that paragraph, no application to have it determined afresh at the trial or hearing of the cause or matter may be made unless the evidence which it is sought to adduce in support of the application could not with reasonable diligence have been adduced at the hearing which resulted in the determination.

[E.r. 27]

### **Directions with respect to statement made in previous proceedings**

25. Where a party to a cause or matter has given notice in accordance with rule 19 that he desires to give in evidence at the trial or hearing of the cause or matter a statement falling within section 1(1) of the Civil Evidence Act which is contained in a record of direct oral evidence given in some other legal proceedings (whether civil or criminal), any party to the cause or matter may apply to the Court for directions under this rule, and the Court hearing such an application may give directions as to whether, and if so on what conditions, the party desiring to give the statement in evidence will be permitted to do so and (where applicable) as to the manner in which that statement and any other evidence given in those other proceedings is to be proved.

[E.r. 28]

### **Power of Court to allow statement to be given in evidence**

26.—(1) Without prejudice to section 1(2)(a) of the Civil Evidence Act and rule 25, the Court may, if it thinks just to do so, allow a statement falling within section 1(1) or 2(1) of the Civil Evidence Act to be given in evidence at the trial or hearing of a cause or matter notwithstanding—

- (a) that the statement is one in relation to which rule 19(1) applies and that the party desiring to give the statement in evidence has failed to comply with that rule, or
- (b) that that party has failed to comply with any requirement of a counter-notice relating to that statement which was served on him in accordance with rule 23.

(2) Without prejudice to the generality of paragraph (1), the Court may exercise its powers under that paragraph to allow a statement to be given in evidence at the trial or hearing of a cause or matter if a refusal to exercise that power might oblige the party desiring to give the statement in evidence to call as a witness at the trial or hearing an opposite party or a person who is or was at the material time the servant or agent of an opposite party.

[E.r. 29]

### **Restriction on adducing evidence as to credibility of supplier of information, etc.**

27. Where—

- (a) notice given under rule 19 in a cause or matter relates to a statement which is admissible by virtue of section 1 of the Civil Evidence Act, and

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- (b) the person who originally supplied the information from which the record containing the statement was compiled, is not called as a witness at the trial or hearing of the cause or matter, and
- (c) none of the reasons mentioned in rule 22 applies so as to prevent the party who gave the notice from calling that person as a witness,

no other party to the cause or matter shall be entitled except with the leave of the Court, to adduce in relation to that person any evidence which could otherwise be adduced by him by virtue of section 4 of the Civil Evidence Act unless he gave a counter-notice under rule 23 in respect of that person or applied under rule 23 for a direction that that person be called as a witness at the trial or hearing of the cause or matter.

[E.r. 30]

#### **Notice required of intention to give evidence of certain inconsistent statements**

28.—(1) Where a person, particulars of whom were contained in a notice given under rule 19 in a cause or matter, is not to be called as a witness at the trial or hearing of the cause or matter, any party to the cause or matter who is entitled and intends to adduce in relation to that person any evidence which is admissible for the purpose mentioned in section 4(1)(b) of the Civil Evidence Act must, not more than 21 days after service of that notice on him, serve on the party who gave that notice, notice of his intention to do so.

(2) If the statement sought to be adduced was made otherwise than in a document, the notice must contain particulars of—

- (a) the time, place and circumstances at or in which the statement was made;
- (b) the person by whom, and the person to whom the statement was made; and
- (c) the substance of the statement or, if material, the words used.

(3) If the statement sought to be adduced was made in a document, a copy or transcript of the document, or of the relevant part thereof, must be annexed to the notice and the notice must contain such (if any) of the particulars mentioned in paragraph 2(a) and (b) as are not apparent on the face of the document or part.

(4) The Court may, if it thinks it just to do so, allow a party to give in evidence at the trial or hearing of a cause or matter any evidence which is admissible for the purpose mentioned in the said section 4(1)(b) notwithstanding that that party has failed to comply with the provisions of paragraph (1).

[E.r. 31]

#### **Costs**

29. If—

- (a) a party to a cause or matter serves a counter-notice under rule 23 in respect of any person who is called as a witness at the trial of the cause or matter in compliance with a requirement of the counter-notice, and
- (b) it appears to the Court that it was unreasonable to require that person to be called as a witness,

then, without prejudice to Order 62, rule 14, the Court may direct that any costs to that party in respect of the preparation and service of the counter-notice shall not be allowed to him and that any costs occasioned by the counter-notice to any other party shall be paid by him to that other party.

[E.r. 32]

## ORDER 39

### EVIDENCE BY DEPOSITION

#### **Power to order depositions to be taken**

1.—(1) The Court may, in any cause or matter where it appears necessary for the purposes of justice, make an order for the examination on oath before a judge, an officer of the Court or some other person, at any place, of any person.

(2) An order under paragraph (1) may be made on such terms (including, in particular, terms as to the giving of discovery before the examination takes place) as the Court thinks fit.

[E.r. 1]

#### **Where person to be examined is out of the jurisdiction**

2.—(1) Where the person in relation to whom an order under rule 1 is required is out of the jurisdiction, an application may be made—

- (a) for an order under that rule for the issue of a letter of request to the judicial authorities of the country in which that person is to take, or cause to be taken, the evidence of that person, or
- (b) if the government of that country allows a person in that country to be examined before a person appointed by the Court, for an order under that rule appointing a special examiner to take the evidence of that person in that country.

(2) An application may be made for the appointment as special examiner of a British consul in the country in which the evidence is to be taken or his deputy—

- (a) if there subsists with respect to that country a Civil Procedure Convention providing for the taking of the evidence of any person in that country for the assistance of proceedings in the High Court, or
- (b) with the consent of the Secretary of State.

[E.r. 2]

#### **Order for issue of letter of request**

3.—(1) Where an order is made under rule 1 for the issue of a letter of request to the judicial authorities of a country to take, or cause to be taken, the evidence of any person in that country the following provisions of this rule shall apply.

(2) The party obtaining the order must prepare the letter of request and lodge it in the Central Office.

(3) If the evidence of the person to be examined is to be obtained by means of written questions, there must be lodged with the letter of request a copy of the interrogatories and cross-interrogatories to be put to him on examination.

(4) Each document lodged under paragraph (2) or (3) must be accompanied by a translation of the document in the official language of the country in which the examination is to be taken or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where the examination is to be taken, unless—

- (a) the master has given a general direction in relation to that country that no translation need be provided, or
- (b) the official language or one of the official languages of that country is English.



(5) Every translation lodged under paragraph (4) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.

(6) The party obtaining the order must, when he lodges in the Central Office the documents mentioned in paragraphs (2) to (5), also file in that office an undertaking signed by him or his solicitor to be responsible personally for all expenses incurred by the Secretary of State in respect of the letter of request and, on receiving due notification of the amount of those expenses, to pay that amount to the Finance Officer of the office of the Secretary of State and to produce a receipt for the payment to the proper officer of the High Court.

[E.r. 3]

#### **Enforcing attendance of witness at examination**

4. Where an order has been made under rule 1—
  - (a) for the examination of any person before an officer of the Court or some other person (in this rule and rules 5 to 14 referred to as “the examiner”), or
  - (b) for the cross-examination before the examiner of any person who has made an affidavit which is to be used in any cause or matter,

the attendance of that person before the examiner and the production by him of any document at the examination may be enforced by writ of subpoena in like manner as the attendance of a witness and the production by a witness of a document at a trial may be enforced.

[E.r. 4]

#### **Refusal of witness to attend, be sworn, etc.**

5.—(1) If any person, having been duly summoned by writ of subpoena to attend before the examiner, refuses or fails to attend or refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document therein, a certificate of his refusal or failure, signed by the examiner, must be filed in the Central Office, and upon the filing of the certificate the party by whom the attendance of that person was required may apply to the Court for an order requiring that person to attend, or to be sworn, or to answer any question or produce any document, as the case may be.

(2) An application for an order under this rule may be made ex parte.

(3) If the Court makes an order under this rule it may order the person against whom the order is made to pay any costs occasioned by his refusal or failure.

(4) A person who wilfully disobeys any order made against him under paragraph (1) is guilty of contempt of court.

[E.r. 5]

#### **Appointment of time and place for examination**

6.—(1) The examiner must give the party on whose application the order for examination was made a notice appointing the place and time at which, subject to any application by the parties, the examination shall be taken, and such time shall, having regard to the convenience of the persons to be examined and all the circumstances of the case, be as soon as practicable after the making of the order.

(2) The party to whom a notice under paragraph (1) is given must, on receiving it, forthwith give notice of the appointment to all the other parties.

[E.r. 6]

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### **Examiner to have certain documents**

7. The party on whose application the order for examination before the examiner was made must furnish the examiner with copies of such of the documents in the cause or matter as are necessary to inform the examiner of the questions at issue in the cause or matter.

[E.r. 7]

### **Conduct of examination**

8.—(1) Subject to any directions contained in the order for examination—

- (a) any person ordered to be examined before the examiner may be cross-examined and re-examined, and
- (b) the examination, cross-examination and re-examination of persons before the examiner shall be conducted in like manner as at the trial of a cause or matter.

(2) The examiner may put any question to any person examined before him as to the meaning of any answer made by that person or as to any matter arising in the course of the examination.

(3) The examiner may, if necessary, adjourn the examination from time to time.

[E.r. 8]

### **Examination of additional witnesses**

9. The examiner may, with the written consent of all the parties to the cause or matter, take the examination of any person in addition to those named or provided for in the order for examination, and must annex such consent to the original deposition of that person.

[E.r. 9]

### **Objections to questions**

10.—(1) If any person being examined before the examiner objects to answer any question put to him, or if objection is taken to any such question, that question, the ground for the objection and the answer to any such question to which objection is taken must be set out in the deposition of that person or in a statement annexed thereto.

(2) The validity of the ground for objecting to answer any such question or for objecting to any such question shall be decided by the Court and not by the examiner, but the examiner must state to the parties his opinion thereon, and the statement of his opinion must be set out in the deposition or in a statement annexed thereto.

(3) If the court decides against the person taking the objection it may order him to pay the costs occasioned by his objection.

[E.r. 10]

### **Taking of depositions**

11.—(1) The deposition of any person examined before the examiner must be taken down by the examiner or a shorthand writer or some other person in the presence of the examiner but, subject to paragraph (2) and rule 10(1) the deposition need not set out every question and answer so long as it contains as nearly as may be the statement of the person examined.

(2) The examiner may direct the exact words of any particular question and the answer thereto to be set out in the deposition if that question and answer appear to him to have special importance.

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(3) The deposition of any person shall be read to him, and he shall be asked to sign it, in the presence of such of the parties as may attend, but the parties may agree in writing to dispense with the foregoing provision.

If a person refuses to sign a deposition when asked under this paragraph to do so, the examiner must sign the deposition.

(4) The original deposition of any person, authenticated by the signature of the examiner before whom it was taken, must be sent by the examiner to the Central Office and shall be filed therein.

[E.r. 11]

#### **Time taken by examination to be indorsed on depositions**

12. Before sending any deposition to the Central Office under rule 11(4), the examiner must indorse on the deposition a statement signed by him of the time occupied in taking the examination and the fees received in respect thereof.

[E.r. 12]

#### **Special report by examiner**

13. The examiner may make a special report to the Court with regard to any examination taken before him and with regard to the absence or conduct of any person thereat, and the Court may direct such proceedings to be taken, or make such order, on the report as it thinks fit.

[E.r. 13]

#### **Order for payment of examiner's fees**

14.—(1) If the fees and expenses due to an examiner are not paid he may report that fact to the Court, and the Court may direct the official solicitor to apply for an order against the party on whose application the order for examination was made to pay the examiner the fees and expenses due to him in respect of the examination.

(2) An order under this rule shall not prejudice any determination on the taxation of costs or otherwise as to the party by whom the costs of the examination are ultimately to be borne.

[E.r. 14]

#### **Perpetuation of testimony**

15.—(1) Witnesses shall not be examined to perpetuate testimony unless an action has been begun for the purpose.

(2) Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity or office, or to any estate or interest in any real or personal property, the right or claim to which cannot be brought to trial by him before the happening of such event, may begin an action to perpetuate any testimony which may be material for establishing such right or claim.

(3) No action to perpetuate the testimony of witnesses shall be set down for trial.

[E.r. 15]

## **ORDER 40**

[No Order made]

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## ORDER 41

### AFFIDAVITS

#### **Form of affidavit**

1.—(1) Subject to paragraphs (2) and (3), every affidavit sworn in a cause or matter must be entitled in that cause or matter.

(2) Where a cause or matter is entitled in more than one matter, it shall be sufficient to state the first matter followed by the words “and other matters”, and where a cause or matter is entitled in a matter or matters and between parties, that part of the title which consists of the matter or matters may be omitted.

(3) Where there are more plaintiffs than one, it shall be sufficient to state the full name of the first followed by the words “and others”, and similarly with respect to defendants.

(4) Every affidavit must be expressed in the first person and must state the place of residence of the deponent and his occupation or, if he has none, his description, and if he is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit must state that fact.

(5) Every affidavit must be in book form, following continuously from page to page, both sides of the paper being used.

(6) Every affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(7) Dates, sums and other numbers must be expressed in an affidavit in figures and not in words.

(8) Every affidavit must be signed by the deponent and the jurat must be completed and signed by the person before whom it is sworn.

(9) An affidavit sworn for the purposes of any proceedings may be filed with the writ, originating summons, originating motion or petition by which the proceedings are begun and when so filed the affidavit shall be marked with the record number of the proceedings.

[E.r. 1]

#### **Affidavit by two or more deponents**

2. Where an affidavit is made by two or more deponents, the names of the persons making the affidavit must be inserted in the jurat except that, if the affidavit is sworn by both or all the deponents at one time before the same person, it shall be sufficient to state that it was sworn by both (or all) of the “above named” deponents.

[E.r. 2]

#### **Affidavit by illiterate or blind person**

3. Where it appears to the person administering the oath that the deponent is illiterate or blind, he must certify in the jurat that—

- (a) the affidavit was read in his presence to the deponent,
- (b) the deponent seemed perfectly to understand it, and
- (c) the deponent made his signature or mark in his presence;

and the affidavit shall not be used in evidence without such a certificate unless the Court is otherwise satisfied that it was read to and appeared to be perfectly understood by the deponent.

[E.r. 3]

### **Use of defective affidavit**

4. An affidavit may, with the leave of the Court, be filed or used in evidence notwithstanding any irregularity in the form thereof.

[E.r. 4]

### **Contents of affidavit**

5.—(1) Subject to Order 14, rules 2(3) and 4(2); to Order 86, rule 2(1), to paragraph (2) of this rule and to any order made under Order 38, rule 3 an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.

(2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof.

[E.r. 5]

### **Scandalous, etc., matter in affidavit**

6. The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive.

[E.r. 6]

### **Alterations in affidavits**

7.—(1) An affidavit which has in the jurat or body thereof any interlineation, erasure or other alteration shall not be filed or used in any proceeding without the leave of the Court unless the person before whom the affidavit was sworn has initialled the alteration and, in the case of an erasure, has re-written in the margin of the affidavit any words or figures written on the erasure and has signed or initialled them.

(2) Where an affidavit is sworn at any office of the Supreme Court, the official stamp of that office may be substituted for the signature or initials required by this rule.

[E.r. 7]

### **Affidavit not to be sworn before solicitor of party, etc.**

8. Without prejudice to Article 78(2) of the Solicitors (Northern Ireland) Order 1976(43), no affidavit shall be sufficient if sworn before the solicitor of the party on whose behalf the affidavit is to be used or before any agent, partner or employee of that solicitor.

[E.r. 8]

### **Filing of affidavits**

9.—(1) Every affidavit must be filed in the appropriate office.

(2) Every affidavit must be indorsed with a note showing on whose behalf it is filed, and an affidavit which is not so indorsed may not be filed or used without the leave of the Court.

[E.r. 9]

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### **Use of original affidavit or office copy**

10.—(1) An original affidavit may be used in any proceedings notwithstanding that it has not been filed in accordance with rule 9.

(2) Where an original affidavit is used then, unless the party whose affidavit it is undertakes to file it, he must immediately after it is used leave it with the proper officer in court or in chambers, as the case may be, and that officer shall send it to be filed.

(3) Where an affidavit has been filed, an office copy thereof may be used in any proceedings.

[E.r. 10]

### **Document to be used in conjunction with affidavit to be exhibited to it**

11.—(1) Any document to be used in conjunction with an affidavit must be exhibited, and not annexed, to the affidavit.

(2) Any exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn.

The certificate must be entitled in the same manner as the affidavit and rule 1(1), (2) and (3) shall apply accordingly.

(3) Every exhibit referred to in an affidavit or a statement of fact shall be marked or labelled with the initials of the deponent followed by a number.

[E.r. 11]

### **Masters and certain clerks may administer oaths, etc.**

12.—(1) The following officers, namely, masters and any clerk in the Supreme Court of a grade not lower than that of deputy principal shall have authority to administer oaths and take affidavits for the purpose of proceedings in the Supreme Court.

(2) For the purposes of this rule “master” includes Master (Taxing Office).

### **Affidavit taken in Commonwealth country admissible without proof of seal, etc.**

13. A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a court, judge, notary public or person having authority to administer oaths in a part of the Commonwealth outside Northern Ireland in testimony of an affidavit being taken before it or him in that part shall be admitted in evidence without proof of the seal or signature being the seal or signature of that court, judge, notary public or person.

[E.r. 12]

### **Notice of affidavit**

14.—(1) A party filing an affidavit intended to be used by him in any proceedings must give to every other party either a copy of the affidavit or notice of the filing.

(2) A party intending to use in any proceedings an affidavit filed by him in previous proceedings must give to every other party notice of his intention to do so.

(3) Any party intending to use an original affidavit in any proceedings, pursuant to rule 10, must give a copy of that affidavit to every other party.

## ORDER 42

### JUDGMENTS

#### Interpretation

1. In this Order “judgment” includes order, decision or direction.

#### Drawing up judgments

- 2.—(1) Every judgment shall—
  - (a) subject to rules 3 and 7(1), be drawn up and signed by an officer of the appropriate office; and
  - (b) be sealed and filed by an officer of that office and such officer shall at the time of filing enter such judgment in the book kept for the purpose and the date of filing shall be deemed to be the date of such entry.
- (2) Where a judgment is filed in the Central Office, the Chancery Office, the Probate and Matrimonial Office or the Office of Care and Protection (other than a judgment in proceedings under the Lunacy Regulation (Ireland) Act 1871(44)) the proper officer shall at the time of filing make a note in the cause book that a judgment has been filed in the cause or matter.
- (3) Where a judgment is given by a judge a note of the judgment shall be made by the officer present at the time it was given.
- (4) Where a form of judgment is prescribed and set out in Appendix A the judgment must be as nearly as possible in that form.

#### Judgments required to be drawn up

- 3.—(1) Subject to paragraph (2), every judgment of the Court shall be drawn up unless the Court otherwise directs.
    - (2) An order—
      - (a) which—
        - (i) extends the period within which a person is required or authorised by these Rules, or by any judgment, to do any act, or
        - (ii) grants leave for the doing of any of the acts mentioned in paragraph (3), and
      - (b) which neither imposes any special terms nor includes any special directions other than a direction as to costs,
- need not be drawn up unless the Court otherwise directs.
- (3) The acts referred to in paragraph (2)(a)(ii) are—
    - (a) the issue of any writ, other than a writ for service out of the jurisdiction;
    - (b) the amendment of a writ of summons or other originating process or a pleading;
    - (c) the filing of any document;
    - (d) any act to be done by an officer of the Court other than a solicitor.

[E.r. 4]

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### **Judgment requiring act to be done: time for doing it**

4.—(1) Subject to paragraph (2), a judgment which requires a person to do an act must specify the time after service of the judgment, or some other time, within which the act is to be done.

(2) Where the act which any person is required by any judgment to do is to pay money to some other person, give possession of any land or deliver any goods, a time within which the act is to be done need not be specified in the judgment by virtue of paragraph (1), but the foregoing provision shall not affect the power of the Court to specify such a time and to adjudge or order accordingly.

[E.r. 2]

### **Judgment requiring act to be done: order fixing time for doing it**

5.—(1) Notwithstanding that a judgment which requires a person to do an act specifies a time within which the act is to be done, the Court shall, without prejudice to Order 3, rule 5, have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein.

(2) Where, notwithstanding rule 4(1), or by reason of rule 4(2), a judgment requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time as may be specified therein.

(3) An application for an order under this rule must be made by summons and the summons must be served on the person required to do the act in question.

### **Judgment in favour of reversioner for detention of goods**

6.—(1) Where a claim relating to the detention of goods is made by a partial owner whose right of action is not founded on a possessory title, any judgment given in respect of the claim shall, notwithstanding anything in section 3(3) of the Torts (Interference with Goods) Act 1977(45), be for the payment of damages only.

In this paragraph “partial owner” means one or two or more persons having interest in the goods, unless he has the written authority of every other such person to sue on the latter's behalf.

(2) This rule is without prejudice to the remedies and jurisdiction mentioned in section 3(8) of the said Act of 1977.

[E.r. 1A]

### **Judgment in default of appearance or defence**

7.—(1) A party entitled to judgment in default of appearance or defence may obtain judgment by producing the following documents to an officer of the Central Office—

- (a) the original writ by which the proceedings were begun;
- (b) the affidavit of service, or certificate of no defence delivered, as the case may be;
- (c) any affidavit or certificate filed under Order 13, rule 1(3) or 4(1) to (4) or Order 19 rule 2(2) or 5(1) to (4); and
- (d) a judgment drawn up by the party.

(2) Where the provisions of any statutory provision or these Rules enable a party to any proceedings to obtain judgment on the production of any documents, the officer of the Central Office shall not sign any such judgment until the documents which the party is required to produce are produced and the officer is satisfied that they are in order.

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(45) 1977 c. 32



### **Date from which judgment takes effect**

8.—(1) A judgment of the Court takes effect from the day of its date.

(2) Such a judgment shall be dated as of the day on which it is given, unless the Court orders it to be dated as of some other earlier or later day, in which case it shall be dated as of that other day;

[E.r. 3]

### **Interest on judgment debts**

9.—(1) Every judgment for the payment of money shall carry interest at the rate specified in the judgment from the time the judgment was given or from such other time as the Court may direct.

(2) Subject to any statutory provision, where the rate of interest to be paid is not specified in the judgment, interest shall be payable at the rate of 15 per cent per annum.

(3) Where an order charging land under section 46 of the Judgments Enforcement (Northern Ireland) Act 1969(46) or a charging order on funds, stock or shares under section 58 of the said Act provides for the payment of interest, such interest shall be payable at the rate of 15 per cent per annum and shall be payable for the period during which the charge is subsisting.

### **Copies of judgments**

10. Before a copy of a judgment is issued it must be sealed and stamped “copy” and there must be noted thereon the number of the judgment and the date of filing.

## **ORDER 43**

### **ACCOUNTS AND INQUIRIES**

#### **Summary order for account**

1.—(1) Where a writ is indorsed with a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time after the defendant has entered an appearance or after the time limited for appearing, apply for an order under this rule.

(2) An application under this rule must be made by summons and, if the Court so directs, must be supported by affidavit or other evidence.

(3) On the hearing of the application, the Court may, unless satisfied by the defendant by affidavit or otherwise that there is some preliminary question to be tried, order that an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

[E.r. 1]

#### **Court may direct taking of accounts etc.**

2.—(1) The Court may, on an application made by summons at any stage of the proceedings in a cause or matter, direct any necessary accounts or inquiries to be taken or made.

(2) Every direction for the taking of an account or the making of an inquiry shall be numbered in the judgment or order so that, as far as may be, each distinct account and inquiry may be designated by a number.

[E.r. 2]

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(46) 1969 c. 30 (N.I.)

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### **Directions as to manner of taking account**

3.—(1) Where the Court orders an account to be taken it may by the same or a subsequent order give directions with regard to the manner in which the account is to be taken or vouched.

(2) Without prejudice to the generality of paragraph (1), the Court may direct that in taking the account the relevant books of account shall be evidence of the matters contained therein with liberty to the parties interested to take such objections thereto as they think fit.

[E.r. 3]

### **Account to be made, verified etc.**

4.—(1) Where an account has been ordered to be taken, the accounting party must make out his account and, unless the Court otherwise directs, verify it by an affidavit to which the account must be exhibited.

(2) The items on each side of the account must be numbered consecutively.

(3) Unless the order for the taking of the account otherwise directs, the accounting party must lodge the account with the Court and must at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.

[E.r. 4]

### **Notice to be given of alleged omissions etc. in account**

5. Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that any item in his account is erroneous in respect of amount or in any other respect must give him notice thereof stating, so far as he is able, the amount sought to be charged with brief particulars thereof or, as the case may be, the grounds for alleging that the item is erroneous.

[E.r. 5]

### **Allowances**

6. In taking any account directed by any judgment or order all just allowances shall be made without any direction to that effect.

[E.r. 6]

### **Delay in prosecution of accounts, etc.**

7.—(1) If it appears to the Court that there is undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court may require the party having the conduct of the proceedings or any other party to explain the delay and may then make such order for staying the proceedings or for expediting them or for the conduct thereof and for costs as the circumstances require.

(2) The Court may direct any party or the Official Solicitor to take over the conduct of the proceedings in question and to carry out any directions made by an order under this rule and may make such order as it thinks fit as to the payment of the Official Solicitor's costs.

[E.r. 7]

### **Distribution of fund before all persons entitled are ascertained**

8. Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order

or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to meet the subsequent costs of ascertaining those other persons.

[E.r. 8]

### **Guardian's accounts**

9. The accounts of a person appointed guardian of a minor's estate must be verified and passed in the same manner as that provided by Order 30 in relation to a receiver's account or in such other manner as the Court may direct.

[E.r. 9]

## **ORDER 44**

### **PROCEEDINGS UNDER JUDGMENTS AND ORDERS: CHANCERY DIVISION**

#### **Application to proceedings under an order**

1. This Order shall, with the necessary modifications, apply in relation to proceedings under an order as it applies in relation to proceedings under a judgment and, accordingly, references therein to a judgment shall be construed as including references to an order.

[E.r. 1]

#### **Documents to be left at Chancery Office: summons to proceed**

2.—(1) Where in order to carry out any directions contained in a judgment given in a cause or matter in the Chancery Division it is necessary to proceed in chambers under the judgment, the party entitled to prosecute the judgment must, within 10 days after entry of the Judgment, leave a copy of it at the Chancery Office with a certificate that it is a true copy of the judgment as entered.

(2) If the party entitled to prosecute the judgment fails to comply with paragraph (1), any other party to the cause or matter may leave a copy of the judgment, with the certificate referred to in that paragraph, at the Chancery Office, and, unless the Court otherwise directs, he shall thereupon become entitled to prosecute the judgment.

(3) Upon leaving a copy of the judgment at the Chancery Office the party entitled to prosecute the judgment must take out a summons to proceed under the judgment.

[E.r. 2]

#### **Service of notice of judgment on person not a party**

3.—(1) Where in an action for—

- (a) the administration of the estate of a deceased person, or
- (b) the execution of a trust, or
- (c) the sale of any property,

the Court gives a judgment which affects the rights or interests of persons not parties to the action or directs any account to be taken or inquiry made, the Court may when giving the judgment or at any stage of the proceedings under the judgment direct notice of the judgment to be served on any person interested in the estate or under the trust or in the property, as the case may be; and any person duly served with notice of a judgment in accordance with this rule shall, subject to paragraph (5), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the action.

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(2) The Court may direct a notice of judgment to be served personally or in such manner as it may specify on the person required to be served, or if it appears to the Court that it is impracticable for any person to serve such notice on any such person it may dispense with service of the notice on that person.

Before notice of a judgment is served the notice must be indorsed with a memorandum in Form No. 36 in Appendix A.

(3) The party prosecuting the judgment must leave at the Chancery Office the stamped copy of the memorandum of appearance of any person served with notice of the judgment or, as the case may be, a certificate that no appearance has been entered by him.

(4) Where the Court dispenses with service of notice of a judgment on any person, it may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and he shall be bound accordingly except where the judgment has been obtained by fraud or non-disclosure of material facts.

(5) A person served with notice of a judgment may, within one month after service of the notice on him, and without entering an appearance, apply to the Court to discharge, vary or add to the judgment.

(6) A person served with notice of a judgment may, after entering an appearance to the notice, attend the proceedings under the judgment.

(7) Order 12, rules 1 to 4, shall apply in relation to the entry of appearance to a notice of judgment as if the judgment were a writ, and the person by whom the notice is served were the plaintiff and the person on whom it is served a defendant.

[E.r. 3]

#### **Directions by Court**

4.—(1) The Court hearing the summons to proceed shall give directions with respect to the proceedings to be taken under the judgment and the conduct thereof, including, in particular, directions with respect to—

- (a) the manner in which any account or inquiry is to be prosecuted,
- (b) the evidence to be adduced in support thereof,
- (c) the parties required to attend all or any part of the proceedings, and
- (d) the time within which each proceeding is to be taken,

and may fix a day or days for the further attendance of the parties.

(2) The Court may revoke or vary any directions given under this rule.

[E.r. 4]

#### **Court may require parties to be represented by same solicitors**

5. Where on the hearing of the summons to proceed or at any stage of the proceedings under the judgment it appears to the Court that the interests of the parties can be classified, it may require the parties constituting each or any class to be represented by the same solicitor, and where the parties constituting any class cannot agree on the solicitor to represent them, the Court may nominate a solicitor to represent the class in the proceedings.

[E.r. 5]

### **Court may require parties to be represented by different solicitors**

6. Where on the hearing of the summons to proceed or at any stage of the proceedings under the judgment it appears to the court that two or more of the parties who are represented by the same solicitor ought to be separately represented, it may require them to be so represented and may adjourn the proceedings until they are.

[E.r. 6]

### **Leave to attend proceedings, etc.**

7. Any party to the proceedings under the judgment who has not been directed to attend may apply to the Court for leave to attend any part of the proceedings at the cost of the estate or other property to which the proceedings relate and to have the conduct of that part either in addition to or in substitution for any other party.

[E.r. 7]

### **Judgment requiring deed to be settled by Court: directions**

8. Where the judgment directs any deed or other instrument to be settled by the judge in chambers, or to be settled by him if the parties to the deed fail to agree it, the Court hearing the summons to proceed under the judgment shall direct—

- (a) that within such period as it may specify the party entitled to prepare a draft of the deed must serve a copy of the draft on every other party who will be a party to the deed, and
- (b) that within 8 days, or such other period, if any, as it may specify, after service on any such other party of a copy of the draft that party must serve on the party by whom the draft was prepared a written statement of his objections (if any) to the draft.

[E.r. 8]

### **Application of rules 10 to 17**

9. Rules 10 to 17 apply—

- (a) where in proceedings for the administration under the direction of the Court of the estate of a deceased person the judgment directs any account of debts or other liabilities of the deceased's estate to be taken or any inquiry for next of kin or other unascertained claimants to be made, and
- (b) where in proceedings for the execution under the direction of the Court of a trust the judgment directs any such inquiry to be made,

and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs any account of debts or other liabilities to be taken or any inquiry to be made.

[E.r. 9]

### **Advertisements for creditors and other claimants**

10.—(1) On the hearing of the summons to proceed the Court may direct the issue of advertisements for creditors or other claimants, and in deciding whether to do so shall have regard to any advertisement previously issued by the personal representatives or trustees concerned.

(2) Every such advertisement shall be prepared by the party prosecuting the judgment, and—

- (a) in the case of an advertisement for creditors, shall be signed by that party's solicitor or, if he has no solicitor, by the master, and

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(b) in the case of an advertisement for other claimants, shall be submitted to the master and if approved by the master shall be signed by him.

(3) The Court shall fix the time within which, and the person to whom, any claimant is to send his name and address and particulars of his claim, and that time and the name and address of that person shall be stated in the advertisement.

[E.r. 10]

#### **Failure to claim within specified time**

11. A claimant who fails to send full particulars of his claim to the person named in any advertisement directed by the Court within the time therein specified shall not be entitled to prove his claim except with the leave of the Court, and in granting leave the Court may impose such terms as to costs and otherwise as it thinks just.

[E.r. 11]

#### **Examination, etc. of claims**

12.—(1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must—

- (a) examine the claims of persons claiming to be creditors of the estate and determine, so far as he is able, to which of such claims the estate is liable, and
- (b) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit verifying lists of—
  - (i) claims sent in pursuance of any advertisement,
  - (ii) claims which have been received by any of the personal representatives otherwise than in pursuance of an advertisement, and
  - (iii) debts of the deceased at the time of his death in respect of which no claim has been received but which are or may still be due and which have come to the knowledge of any of the personal representatives.

(2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must—

- (a) examine the claims and determine, so far as he is able, which of them are valid claims, and
- (b) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit verifying lists of—
  - (i) claims sent in pursuance of any advertisement, and
  - (ii) claims received by any of the personal representatives or trustees concerned, otherwise than in pursuance of an advertisement, or which have come to his knowledge.

(3) The affidavit required by paragraph (1) or (2) must, as the circumstances of the case require, specify, in relation to the claims of creditors, the claims and debts which in the belief of the deponent are liabilities of the estate of the deceased and ought to be allowed, in whole or in part, and, in relation to the claims of persons other than creditors, the claims which in the belief of the deponent are valid claims, with, in either case, the reasons for such belief.

(4) If the personal representatives or trustees concerned are not the parties directed by the Court to examine claims, they must join with the party directed to examine them in making the affidavit required by this rule.

[E.r. 12]

### **Adjudication on claims**

- 13.—(1) The Court adjudicating on the claims—
- (a) may allow any such claim after or without proof thereof;
  - (b) may direct any such claim to be investigated in such manner as it thinks fit;
  - (c) may require any claimant to attend and prove his claim or to furnish further particulars or evidence of it.
- (2) Where the Court exercises the power conferred by paragraph 1(c) in relation to any claimant, such party as the Court may direct must serve on that claimant a notice requiring him—
- (a) to file an affidavit in support of his claim within such time, not being less than 7 days after service of the notice, as may be specified in the notice and to attend before the Court for adjudication on the claim at such time as may be so specified, or
  - (b) to produce to the Court at such time as may be so specified such documents in support of his claim as may be so specified or described.
- (3) Where a claimant fails to comply with a notice served on him under paragraph (2) his claim may be disallowed.
- (4) A claimant who files an affidavit in compliance with a notice served on him under paragraph (2) must serve notice of the filing on the party by whom the first-mentioned notice was served and, unless the Court otherwise directs, that party must produce an office copy of the affidavit at the adjudication of the claim.
- (5) No person claiming to be a creditor need make an affidavit or attend in support of his claim, except for the purpose of producing any documents which he is required to produce, unless served with a notice under paragraph (2)(a).
- (6) If the Court so directs, a person claiming to be a secured creditor must produce his security at the Chancery Office.
- (7) In this rule references to a claim include references to part of a claim.

[E.r. 13]

### **Adjournment of adjudication**

14. Where on the day appointed for adjudication of claims any claim is not then disposed of, the adjudication shall be adjourned to a day appointed by the Court, and the Court may fix the time within which any evidence in support of or in opposition to the claim is to be filed.

[E.r. 14]

### **Service of notice of judgment on certain claimants**

15.—(1) Where a claimant other than a creditor has established his claim, then, unless he is a party to the cause or matter or has previously been served with notice of the judgment or the Court otherwise directs, the party having the conduct of the cause or matter must serve notice of the judgment on him.

(2) A person duly served with notice of a judgment under this rule shall, subject to rule 3(5), as applied by paragraph (4), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the action.

(3) Where the Court directs under paragraph (1) that notice of a judgment shall not be served on a person, it may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and he shall be bound accordingly except where the judgment has been obtained by fraud or non-disclosure of material facts.

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(4) Rule 3(5), (6) and (7) shall apply in relation to a person served with notice of a judgment under this rule as they apply in relation to a person served with notice of a judgment under that rule.

[E.r. 15]

#### **Notice, etc. of claims allowed**

16.—(1) Such party as the Court may direct must serve on every creditor whose claim or any part thereof has been allowed or disallowed and who did not attend when the claim was disposed of a notice informing him of that fact.

(2) Such party, if any, as the Court may direct must make out a list of the creditors' claims, and a list of any other claims, allowed and leave it at the Chancery Office.

[E.r. 16]

#### **Service of notices**

17. For the purpose of Order 65, rule 5, in its application to the service of any notice under this Order on a claimant, the proper address of a claimant shall be the address stated in his claim, or, if a solicitor is acting for him in connection with the claim, the business address of that solicitor.

[E.r. 17]

#### **Interest on debts**

18.—(1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the Court otherwise orders, interest shall be allowed—

- (a) on any such debt as carries interest, at the rate it carries, and
- (b) on any other debt, from the date of the judgment at the rate payable on judgment debts at that date.

(2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his debt in accordance with paragraph (1)(b) out of any assets which may remain after satisfying the costs of the cause or matter, the debts which have been established and the interest on such of those debts as by law carry interest.

(3) For the purposes of this rule “debt” includes funeral, testamentary or administration expenses and, in relation to expenses incurred after the judgment, for the reference in paragraph (1)(b) to the date of the judgment there shall be substituted a reference to the date when the expenses became payable.

[E.r. 18]

#### **Interest on legacies**

19. Where an account of legacies is directed by any judgment, then, subject to any directions contained in the will or codicil in question and to any order made by the Court, interest shall be allowed on each legacy at the rate of £5 per cent. per annum beginning at the expiration of one year after the testator's death.

[E.r. 19]

#### **Determination by judge of question arising before Master**

20.—(1) Any party may, before the proceedings before the Master under any judgment are concluded, apply to the judge for the determination of any question arising in the course of the proceedings.



Unless the Court otherwise directs, a fresh summons shall not be issued for the purpose of an application under this paragraph.

(2) It shall not be necessary to draw up the order or directions made or given by the judge on the determination of such question, except in the event of an appeal to the Court of Appeal, but the master shall refer to such order or directions in his certificate under rule 21.

[E.r. 20]

### **Master's certificate**

21.—(1) The result of proceedings before the Master under a judgment shall be stated in the form of a certificate signed by the master.

(2) Such certificate shall refer to so much of the judgment, to such documents or parts thereof and to such of the evidence as will make it clear upon what the result stated in the certificate is founded but shall not, unless the circumstances of the case render it necessary, set out the judgment or any documents, evidence or reasons.

(3) Where the judgment requires the taking of any account, the certificate must refer to the account verified by filed affidavit and must specify by reference to the numbered items in the account which, if any, of such items have been disallowed or varied and the additions, if any, which have been made by way of surcharge or otherwise.

(4) Where by reason of the alterations made in the account verified by filed affidavit the Court has directed a fresh account incorporating the alterations to be made, the reference in paragraph (3) to the account so verified shall be construed as a reference to the fresh account.

[E.r. 21]

### **Settling and filing of Master's certificate**

22.—(1) A draft of the Master's certificate shall be drawn up in the Chancery Office unless the Master directs it to be drawn up by a party to the proceedings and the draft shall be settled by the parties before the Master on such day as he may appoint.

(2) The certificate signed by the Master and any account referred to therein shall be filed in the Chancery Office.

[E.r. 22]

### **Discharge or variation of Master's certificate**

23.—(1) Any party to proceedings under a judgment may, not later than—

- (a) 8 clear days after the filing of the Master's certificate therein, or
- (b) if the certificate is to be acted upon by the Accountant General without further order or is a certificate passing a receiver's account, 2 clear days after the filing thereof,

apply by summons for an order of the judge in person discharging or varying the certificate.

A copy of any summons to discharge or vary a certificate which is to be acted upon by the Accountant General without further order must be served on the Accountant General as soon as practicable after the issue thereof.

(2) Subject to paragraph (3), any such certificate shall, on the expiration of the period specified in relation to it in paragraph (1), becoming binding on the parties to the proceedings unless discharged or varied by order under paragraph (1).

(3) The judge in person may, in special circumstances, by order discharge or vary the certificate of the Master notwithstanding that the certificate has become binding on the parties.

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An application for an order under this paragraph may be by motion or summons.

[E.r. 23]

**Further consideration of cause or matter in chambers**

24.—(1) Where the Master's certificate has been filed in any cause or matter in the Chancery Division, then, if—

- (a) the cause or matter in which it was filed is a debenture holders' action or the judgment to be made in the cause or matter in which it was filed is for the distribution of an insolvent estate or for the distribution of the estate of a person who died intestate, or
- (b) the order on which the certificate was made was made in chambers and no direction has been given that the cause or matter be adjourned for further consideration in court, or
- (c) an order has been made directing that the cause or matter be adjourned for further consideration in chambers,

a summons for the further consideration of the cause or matter may be issued—

- (i) after the expiration of 8 clear days, and before the expiration of 14 days, from the filing of the Master's certificate, by the plaintiff or party having the conduct of the proceedings, or
- (ii) after the expiration of the said 14 days, by any party.

(2) There shall be at least 6 days between the service of a summons under this rule and the day named therein for the further consideration of the cause or matter.

[E.r. 24]

**Further consideration of cause or matter in court**

25.—(1) Where the Master's certificate has been filed in any cause or matter in the Chancery Division, then, if—

- (a) the judgment on which the certificate was made was given in court and the cause or matter is not such as is mentioned in rule 25(1)(a) and no direction has been given that it be adjourned for further examination in chambers, or
- (b) an order has been made directing that the cause or matter be adjourned for further consideration in court,

the cause or matter may be set down in the cause book for further consideration—

- (i) after the expiration of 8 clear days, and before the expiration of 14 days, from the filing of the Master's certificate, on the written request of the plaintiff or party having the conduct of the proceedings, or
- (ii) after the expiration of the said 14 days, on the written request of any party,

upon the production, in either case, of the judgment adjourning the cause or matter for further consideration, or an office copy thereof, and an office copy of the Master's certificate or a memorandum of the date of filing of the certificate, indorsed on request by the proper officer on the judgment or office copy thereof.

When a cause or matter is so set down, a copy of the writ or other originating process by which the cause or matter was begun, a copy of the pleadings (if any) and two copies of minutes of the judgment sought must also be left with the proper officer.

(2) A cause or matter so set down shall not be put into the list for further consideration until after the expiration of 10 days from the day on which it was so set down, and shall be marked in the cause book accordingly, and notice of the setting down and of the day marked in the cause book as the day

before which the cause or matter is not to be put in the list for further consideration must be given to the other parties to the cause or matter at least 6 days before that day.

[E.r. 25]

## ENFORCEMENT OF JUDGMENTS AND ORDERS

### ORDER 45

#### ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL

##### **Interpretation**

1. In this Order “the Act of 1969” means the Judgments (Enforcement) Act (Northern Ireland) 1969(47).

##### **Enforcement of judgment, etc., for payment of money into court**

2.—(1) Subject to the provisions of these rules, a judgment or order for the payment of money into court may be enforced by one or more of the following means, that is to say—

- (a) the appointment of a receiver;
- (b) in a case in which rule 5 applies, an order of committal under Order 52.

(2) Paragraph (1) is without prejudice to any other remedy available to enforce such a judgment or order as is therein mentioned or to the power of a court to make a committal order under Part VII of the Act of 1969 or to the enactments relating to bankruptcy or the winding up of companies.

[E.r. 1]

##### **Enforcement of judgment for possession of land**

3. Without prejudice to Section 53 of the Act of 1969 and subject to the provisions of these rules, a judgment or order for the giving of possession of land may be enforced in a case in which rule 5 applies by an order of committal under Order 52.

##### **Enforcement of judgment to do or abstain from doing any act**

4.—(1) Where—

- (a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under Order 3, rule 5, or
- (b) a person disobeys a judgment or order requiring him to abstain from doing an act,

then, without prejudice to section 92 of the Act of 1969 and subject to the provisions of these rules, the judgment or order may, subject to Part VII of the Act of 1969, be enforced by an order of committal under Order 52.

(2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under Order 42, rule 5 requiring the act to be done within some other time, references in paragraph (1) of this rule to a judgment or order shall be construed as references to the order made under Order 42 rule 5.

[E.r. 5]

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(47) 1969 c. 30 (N.I.)

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### **Service of copy of judgment, etc., prerequisite to enforcement under rule 5**

- 5.—(1) In this rule references to an order shall be construed as including references to a judgment.
- (2) Subject to Order 24, rule 15(3), Order 26, rule 6(3), and paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 4 unless—
- (a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question, and
  - (b) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.
- (3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced by an order of sequestration unless a copy of the order requiring the body corporate to do the act has been served on an officer of the company before the expiration of the time within which the body was required to do the act.
- (4) There must be indorsed on the copy of an order served under this rule a notice informing the person on whom the copy is served—
- (a) in the case of service under paragraph (2), that if he neglects to obey the order within the time specified therein, or, if the order is to abstain from doing an act, that if he disobeys the order, he is liable to process of enforcement to compel him to obey it, and
  - (b) in the case of service under paragraph (3); that if the body corporate neglects to obey the order within the time so specified or, if the order is to abstain from doing an act, that if the body corporate disobeys the order, it is liable to process of enforcement to compel compliance with the order.
- (5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there must also be served a copy of any order made under Order 3, rule 5, extending or abridging the time for doing the act and, where the first-mentioned order was made under Order 42, rule 5, a copy of the previous order requiring the act to be done.
- (6) An order requiring a person to abstain from doing an act may be enforced under rule 4 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order had notice thereof either—
- (a) by being present when the order was made, or
  - (b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.
- (7) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

[E.r. 7]

### **Court may order act to be done at expense of disobedient party**

6. If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers under section 33 of the Act and its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court may direct and an order for payment by the disobedient party of the amount so ascertained and costs may be made by the Court.

[E.r. 8]

**Enforcement by or against person not being a party**

7.—(1) Any person, not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party.

(2) Any person, not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

[E.r. 9]

**Conditional judgment: waiver**

8. A party entitled under any judgment or order to any relief subject to the fulfilment of any condition who fails to fulfil that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have been taken if the judgment or order had not been given or made.

[E.r. 10]

**Matters occurring after judgment: stay of enforcement, etc.**

9. A party against whom a judgment has been given or an order made may apply to the Court for a stay of enforcement of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.

[E.r. 11]

## ORDER 46

### LEAVE TO ENFORCE JUDGMENTS

**Application for leave to enforce**

1.—(1) Subject to Order 8-1, rule 5, where leave to enforce a judgment or order is required an application for such leave may be made ex parte unless the Court directs it to be made by summons.

(2) Such an application must be supported by an affidavit—

- (a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due thereunder at the date of the application;
- (b) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to enforce the judgment or order in question and that the person against whom it is sought to enforce is liable to enforcement under it.

(3) The Court hearing such application may grant leave in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in an action may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.

[E.r. 4]

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## ORDER 47

### SEQUESTRATION

#### **Application for order of sequestration**

1.—(1) An application for an order of sequestration must be made to a judge by motion.

(2) Subject to paragraph (3), the notice of motion, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person against whose property the order of sequestration under Part VIII of the Judgments (Enforcement) Act (Northern Ireland) 1969 is sought.

(3) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service of the notice of motion under this rule if it thinks it just to do so.

(4) The judge hearing an application for an order of sequestration may sit in private in any case in which, if the application were for an order of committal, he would be entitled to do so by virtue of Order 52, rule 8, but, except in such a case, the application shall be heard in open court.

[E.O. 46 r. 5]

## ORDER 48

### EXAMINATION OF PARTY LIABLE TO SATISFY JUDGMENT

#### **Examination of party liable to satisfy judgment other than a judgment for the payment of money**

1.—(1) Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than a judgment or order for the payment of money, the Court may make an order for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in the order.

(2) An order under this rule must be served personally on the party liable to satisfy the judgment or order.

[E.r. 2]

#### **Examiner to make record of statement pursuant to examination under rule 1**

2. The officer conducting the examination shall take down, or cause to be taken down, in writing the statement made by the person at the examination, read it to him and ask him to sign it; and if he refuses the officer shall sign the statement.

[E.r. 3]

## ORDER 49

[No Order made]

## ORDER 50

### FUNDS IN COURT: STOP ORDER

#### **Funds in court: stop order**

1.—(1) The Court, on the application of any person—

- (a) who has a mortgage or charge on the interest of any person in funds in court, or
- (b) to whom that interest has been assigned

may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with such funds, or any part thereof, or the income thereon, without notice to the applicant.

(2) An application for an order under this rule must be made by summons in the cause or matter relating to the funds in court, or, if there is no such cause or matter, by originating summons.

(3) The summons must be served on every person whose interest may be affected by the order applied for and on the Accountant General but shall not be served on any other person.

(4) Without prejudice to the Court's powers and discretion as to costs, the Court may order the applicant for an order under this rule to pay the costs of any party to the cause or matter relating to the funds in question, or of any person interested in those funds, occasioned by the application.

[E.r 10]

## ORDER 51

[No Order made]

## ORDER 52

### COMMITTAL

#### **Committal for contempt of court**

1.—(1) The power of the High Court or Court of Appeal to punish for contempt of court may be exercised by an order of committal.

(2) Where contempt of court—

- (a) is committed in connection with—
  - (i) any proceedings in the High Court, or
  - (ii) criminal proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court, or
  - (iii) proceedings in an inferior court, or
- (b) is committed otherwise than in connection with any proceedings,

then, subject to paragraph (3) and rule 5, an order of committal may be made only by a court of the High Court consisting of two or more judges, and in this Order the word “Court” shall be construed accordingly save where the context or paragraph (4) otherwise requires.

(3) Where civil contempt of court is committed in connection with any proceedings in the High Court an order of committal may be made by a single judge.

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(4) Where contempt of court is committed in relation to the Court of Appeal or in connection with any proceedings therein, an order of committal may be made by that Court as well as by the Court under paragraph (2).

(5) Every order of committal may be directed to any police-officer or to such other person as the Court may order.

[E.r. 1]

### **Application to the Court**

2.—(1) Except under rule 1(3), no application to the Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.

(2) An application for such leave must be made ex parte to a judge in chambers or to a single judge of the Court of Appeal and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application for leave not later than the preceding day to the Crown Office and must at the same time lodge in that Office copies of the statement and affidavit.

(4) Where an application for leave under paragraph (2) is refused, the applicant may make a fresh application for such leave to the appropriate court.

(5) An application made by virtue of paragraph (4) must be made within 8 days after the judge's refusal to give leave or, if the appropriate court does not sit within that period, on the first day on which it sits thereafter.

[E.r. 2]

### **Application for order after leave to apply granted**

3.—(1) When leave has been granted under rule 2 to apply for an order of committal, the application for the order must be made by motion to the appropriate Court and, unless the Court or judge granting leave has otherwise directed, there must be at least 8 clear days between the service of the notice of motion and the day named therein for the hearing.

(2) Unless within 14 days after such leave was granted the motion is entered for hearing the leave shall lapse.

(3) Subject to paragraph (4), the notice of motion, accompanied by a copy of the statement and affidavit in support of the application for leave under rule 2, must be served personally on the person sought to be committed.

(4) Without prejudice to the powers of the Court or judge under Order 65, rule 4, the Court or judge may dispense with service of the notice of motion under this rule if it or he thinks it just to do so.

[E.r. 3]

### **Application for order under rule 1(3)**

4.—(1) An application for an order of committal under rule 1(3) must be made by motion and be supported by an affidavit.

(2) Subject to paragraph (3); the notice of motion, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally.

(3) Without prejudice to its powers under Order 65 rule 4, the Court may dispense with service of the notice under this rule if it thinks it just to do so.



### **Where person sought to be committed fails to appear**

5. Where on the hearing of the motion the person sought to be committed fails to appear the Court may make an order of committal against him if it thinks it just to do so.

### **Saving for power to commit without application for purpose**

6. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the High Court or Court of Appeal to, make an order of committal of its own motion against a person guilty of contempt of court.

[E.r. 5]

### **Contempt in presence of judge**

7.—(1) Without prejudice to rule 6, any person who, in the presence of a judge sitting in the High Court or Court of Appeal appears to be guilty of contempt of court may immediately be called upon to show cause why an order of committal should not be made against him or he may be ordered to appear on some future date, with or without recognizances, before the High Court or Court of Appeal to show cause why an order of committal should not be made against him.

(2) Where the High Court or Court of Appeal directs that recognizances shall be entered into, the Court shall determine the number of sureties, if any, the amount in which the person who appears to be guilty of contempt and any sureties are to be bound and the conditions to be indorsed on the recognizances with a view to the recognizances being taken subsequently.

(3) Any such recognizance may be entered into before a master who before taking the recognizance of a surety must satisfy himself that the surety is a suitable person to enter into a recognizance.

### **Provisions as to hearing**

8.—(1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases, that is to say—

- (a) where the application arises out of proceedings relating to the wardship or adoption of a minor or wholly or mainly to the guardianship, custody, maintenance or upbringing of a minor, or rights of access to a minor;
- (b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961(48) or any other incapacitating condition;
- (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;
- (d) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private;

but, except as aforesaid, the application shall be heard in open court.

(2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open court state—

- (a) the name of that person,
- (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made, and
- (c) if he is being committed for a fixed period, the length of that period.

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(48) 1961 c. 15 (N.I.)

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(3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the statement under rule 2.

The foregoing provision is without prejudice to the powers of the Court under Order 20, rule 8.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give or adduce evidence on his own behalf, he shall be entitled to do so.

(5) In this rule references to a court sitting in private include references to a court sitting in camera and a judge in chambers.

[E.r. 6]

#### **Power to suspend execution of committal order**

9.—(1) The Court by which an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

[E.r. 7]

#### **Discharge of person committed**

10.—(1) The Court may, on the application of any person committed to prison until further order for any contempt of court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver any thing to some other person or to deposit it in court or elsewhere, and an order of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the "custody or power of the person committed, the sequestrators appointed by the order of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the sequestrators as it thinks fit.

[E.r. 8]

#### **Saving for other powers**

11. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any statutory provision in like manner as if he had been guilty of contempt of the High Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

[E.r. 9]

COURT OF APPEAL ETC.

## ORDER 53

### APPLICATIONS FOR JUDICIAL REVIEW

#### **Procedure for application for judicial review**

1. There shall be a procedure, to be known as an application for judicial review, under which application may be made to the Court for one or more of the following forms of relief, that is to say, relief by way of—

- (a) an order of mandamus;
- (b) an order of certiorari;
- (c) an order of prohibition;
- (d) a declaration;
- (e) an injunction.

[E.r. 1]

#### **Exercise of jurisdiction in a criminal cause or matter**

2.—(1) Save as otherwise provided by this Order and subject to paragraph (3) and to rules 3(3) and 8(1), in a criminal cause or matter the jurisdiction of the Court on or in connection with an application for judicial review shall be exercised by three judges sitting together.

(2) Where the Lord Chief Justice so directs, such jurisdiction may be exercised by two judges.

(3) In vacation any jurisdiction under this rule may, where necessary, be exercised by a single judge.

(4) No appeal shall lie from an order made by a judge exercising jurisdiction under paragraph (3), but an application may be made by motion within 10 days to the Court, constituted in accordance with paragraph (1) or (2), to set aside or discharge the order and to substitute such other order as the Court may think fit.

(5) Where in accordance with paragraph (2) a matter is heard before two judges and those judges differ in opinion, it shall be re-heard and determined by three judges.

(6) Notwithstanding this rule, any jurisdiction on consent may be exercised by a single judge in accordance with section 16(5) of the Act.

#### **Grant of leave to apply for judicial review**

3.—(1) Leave of the Court shall be obtained in accordance with this rule before any application for judicial review, other than an application for an order of certiorari by the Attorney General acting on behalf of the Crown, is made.

(2) An application for leave must be made *ex parte* by lodging in the Central Office—

- (a) a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and
- (b) an affidavit or affidavits, as the case may require, verifying the facts relied on.

(3) The jurisdiction of the Court to consider and determine an application for leave may be exercised by a judge while sitting in chambers.

(4) Without prejudice to its powers under section 18(2)(d) of the Act and Order 20, rule 8, the Court hearing an application for leave may direct or allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise, on such terms; if any, as it thinks fit.

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(5) The Court shall not, having regard to section 18(4) of the Act, grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(6) Such leave shall not be granted if, having regard to the nature of the persons and bodies against whom relief may be granted by way of an order of mandamus, prohibition or certiorari, the Court is satisfied that the case is one in respect of which relief could not be granted by way of any such order.

(7) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceeding which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(8) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

(9) The Court on considering an application for leave may make an order granting relief by way of an order of mandamus, certiorari or prohibition where it considers that in the special circumstances of the case such an order should be made forthwith.

(10) Upon consideration of an application for leave the Court may direct the applicant to appear before it and no application for leave shall be refused without first giving the applicant an opportunity of being heard.

(11) In a criminal cause or matter the Court shall, for the purposes of paragraph (9), or a refusal of leave under paragraph (10), be constituted in accordance with rule 2.

(12) The applicant shall be informed of the result of the application, unless it has been decided in his presence.

(13) Where leave to apply for judicial review is granted, then (without prejudice to the generality of section 19 of the Act)—

(a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;

(b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

[E.r. 3]

#### **Delay in applying for relief**

4. Without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made, where leave to apply for relief by way of judicial review has not been sought within three months after the date of the proceeding, act or omission complained of, the Court shall not grant such leave or relief unless it is satisfied that the granting of the relief sought would not cause hardship to or unfairly prejudice the rights of any person.

[E.r. 4]

#### **Mode of applying for judicial review**

5.—(1) Where leave has been granted to make an application for judicial review, the application shall be made to the Court by originating motion, and the grounds relied on and the relief granted shall only be one or more of those specified in the application.

(2) The application shall be grounded on the original statement and affidavit or affidavits lodged in support of the application for leave.

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(3) The notice of motion must be served on all persons directly affected and, where it relates to any proceedings in or before a court and the object of the application is either to compel the court or an officer of the court to do any act in relation to the proceedings or to quash them or any order made therein, the notice must also be served on the clerk or registrar of the court and, where any objection to the conduct of the judge is to be made, on the judge. For the purpose of this paragraph the expression “court” and “judge” shall be deemed to include a tribunal and the president or chairman of a tribunal respectively.

(4) Unless the Court granting leave has otherwise directed, there must be at least 10 days between the service of the notice of motion and the day named therein for hearing.

(5) A notice of motion must be issued within 14 days after the grant of leave or else leave shall lapse.

(6) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of motion must be filed before the motion is entered for hearing and, if any person who ought to be served under this rule has not been served, the affidavit must state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the motion.

(7) If on the hearing of the motion the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice may be served on that person.

(8) Except in a criminal cause or matter the Court of Appeal may hear and determine an application for an order under this rule where the Court has granted leave under rule 3 on appeal from the refusal of such leave by the Court.

[E.r. 5]

### **Statements and affidavits**

6.—(1) Copies of the statement in support of the application for leave under rule 3 must be served with the notice of motion and, subject to paragraph (2), no grounds shall be relied upon nor any relief sought at the hearing except the grounds and relief set out in the statement.

(2) Without prejudice to its powers under section 18(2)(d) of the Act and Order 20, rule 8, the Court may on the hearing of the motion direct or allow the applicant to amend his statement, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

(4) Each party to the application must supply to every other party on demand and on payment of the proper charges copies of every affidavit which he proposes to use at the hearing including, in the case of the applicant, the affidavit or affidavits in support of the application for leave under rule 3.

[E.r. 6]

### **Claims for damages**

7.—(1) On an application for judicial review the Court may, subject to paragraph (2), award damages to the applicant if—

- (a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates, and

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(b) the Court is satisfied that, if the claim had been made in a separate action begun by the applicant at the time of making his application, he would have been entitled to such damages.

(2) Order 18, rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

[E.r. 7]

#### **Application for discovery, interrogatories, cross-examination, etc.**

8.—(1) Unless the Court otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to a judge in chambers.

In this paragraph “interlocutory application” includes an application for an order under Order 24 or Order 26 or Order 38 rule 2(3), or for an order dismissing the proceedings by consent of the parties.

(2) In relation to an order made by a master pursuant to, paragraph (1), Order 58, rule 1, shall have effect as if a reference to the Court were substituted for the reference to a judge in chambers.

(3) In a criminal cause or matter no appeal shall lie from an order made by a judge pursuant to paragraph (1), but an application may be made by motion within 5 days to the Court, constituted in accordance with rule 2, to set aside or discharge the order and to substitute such other order as the Court may think fit.

(4) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

#### **Hearing of application for judicial review**

9.—(1) On the hearing of any motion under rule 5, any person who desires to be heard in opposition to the motion, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion.

[E.r. 8]

(2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion he has lodged in the Central Office a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the motion.

(3) Where an order of certiorari is made in any such case as is referred to in paragraph (2), the order shall, subject to paragraph (4), direct that the proceedings shall be quashed forthwith on their removal into the Queen's Bench Division.

(4) Where—

(a) the relief sought is an order of certiorari, and

(b) the Court is satisfied that there are grounds for quashing the decision in issue,

the Court may, instead of quashing the decision, remit the matter to the lower deciding authority concerned, with a direction to reconsider it and reach a decision in accordance with the ruling of the Court or may reverse or vary the decision of the lower deciding authority.

(5) Subject to section 18(6) of the Act, the Court may direct pleadings to be delivered or authorise or require oral evidence to be given where this appears to the Court to be necessary or desirable.

(6) Where the Court directs pleadings to be delivered, it may order the proceedings to continue as if they had been begun by writ; and Order 28 rule 8 shall apply as if the application had been made by originating summons.

### **Right of appeal**

10. Leave shall not be required for an appeal to the Court of Appeal from—

- (a) an order refusing an application for leave under rule 3; or
- (b) an order granting or refusing an application for judicial review.

[E.r. 9]

11. The provisions of this Order shall apply to an application under section 24 of the Act as they apply to an application for judicial review.

[E.r. 10]

## **ORDER 54**

### **APPLICATIONS FOR WRIT OF HABEAS CORPUS**

#### **Application for writ of habeas corpus ad subjiciendum**

1.—(1) Subject to paragraph (2), an application for a writ of habeas corpus ad subjiciendum shall be, made ex parte or by originating notice of motion to the Court.

(2) A civil application for a writ of habeas corpus ad subjiciendum relative to the custody, care or control of a minor shall be made ex parte or by originating summons to a judge in chambers who shall for this purpose be deemed to constitute the Court.

(3) The application must, subject to paragraph (4), be supported by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.

(4) Where the person restrained is unable for any reason to make the affidavit required by paragraph (3), the affidavit may be made by some other person on his behalf and that affidavit must state for what reason the person detained is unable to make the affidavit himself.

#### **Power of court to which ex parte application made**

2.—(1) Where an application is made ex parte, the court may make an order forthwith for the writ to issue or may direct that an application be made—

- (a) by originating motion where the application is made in court, or
- (b) by originating summons where the application is made in chambers.

(2) The summons or notice of motion must be served on the person against whom the issue of the writ is sought and on such other persons as the Court may direct, and, unless the Court otherwise directs, there must be at least 8 clear days between the service of the summons or notice and the date named therein for the hearing of the application.

#### **Copies of affidavits to be supplied**

3. Every party to an application under rule 1 must supply to every other party on demand and on payment of the proper charges copies of the affidavits which he proposes to use at the hearing of the application.

#### **Power to order release of person restrained**

4.—(1) Without prejudice to rule 2(1), the Court hearing an application for a writ of habeas corpus ad subjiciendum may in its discretion order that the person restrained be released, and such

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order shall be a sufficient warrant to any governor of a prison, constable or other person for the release of the person under restraint.

(2) Where such an application in a criminal cause or matter is heard by a single judge and the judge does not order the release of the person restrained, he shall direct that the application be made by originating motion to a court consisting of two or more judges.

#### **Directions as to return of writ**

5. Where a writ of habeas corpus ad subjiciendum is ordered to issue, the Court by which the order is made shall give directions as to the Court before which, and the date on which, the writ is returnable.

#### **Service of writ and notice**

6.—(1) Subject to paragraphs (2) and (3), a writ of habeas corpus ad subjiciendum must be served personally on the person to whom it is directed.

(2) If it is not possible to serve such writ personally, or if it is directed to a governor of a prison or other public official, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person, the writ must be served in manner provided by this rule on the person first named in the writ, and copies must be served on each, of the other persons in the same manner as the writ.

(4) There must be served with the writ a notice, in Form No. 60 in Appendix A, stating the Court before which and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

#### **Return of the writ**

7.—(1) The return to a writ of habeas corpus ad subjiciendum must be indorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.

(2) The return may be amended, or another return substituted therefor, by leave of the Court before which the writ is returnable.

#### **Procedure at hearing of writ**

8. When a return to a writ of habeas corpus ad subjiciendum is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his counsel shall be heard first, then the counsel for the opposite party, and then one counsel for the person restrained in reply.

#### **Bringing up prisoner to give evidence, etc.**

9.—(1) An application for a writ of habeas corpus ad testificandum or of habeas corpus ad respondendum must be made ex parte on affidavit to a judge in chambers.

(2) An application for an order to bring up a prisoner, otherwise than by writ of habeas corpus, to give evidence in any cause or matter, civil or criminal, before any court or tribunal must be made ex parte on affidavit to a judge in chambers.

#### **Form of writ**

10. A writ of habeas corpus must be as nearly as possible in Form No. 59, 61 or 62 in Appendix A.



**ORDER 55**  
**APPEALS TO THE HIGH COURT (OTHER THAN CASES STATED)**  
**PART I**  
**COUNTY COURT APPEALS**

**Interpretation**

1. In this Part “the Order” means the County Courts (Northern Ireland) Order 1980(49).

**Lodgment and entry of appeal**

2.—(1) The appellant must lodge two copies of the notice of appeal in Form No. 37 in Appendix A in the Central Office within a period of 21 days commencing on the date on which the decree was pronounced in the County Court.

(2) One of the two copies of the notice of appeal must be duly stamped and endorsed with particulars of service.

(3) The proper officer shall on lodgment of the notice of appeal enter the appeal for hearing and send a copy of the notice of appeal lodged under this rule to the Chief Clerk of the court of trial who shall thereupon complete Form 37A in Appendix A and send it to the proper officer together with the original decree appealed against or a certificate as to its nature and effect.

(4) In a probate suit or any other matter where an original decree appealed from has been entered up in the permanent record books of the county court, an office copy certified by the appropriate officer may be sent to the proper officer of the Central Office instead of the original.

**Service of notice of appeal**

3. The appellant must, within the period of 21 days mentioned in rule 2(1), serve a copy of the notice of appeal on all parties to the proceedings in the court below who are directly affected by the appeal and, subject to rule 4, it shall not be necessary to serve the notice on parties not so affected.

**Directions as to service**

4.—(1) A judge may in any case direct that the notice of appeal be served upon any party to the proceedings in the county court on whom it has not been served, or upon any person not a party to those proceedings.

(2) In any case where a direction is given under this rule the judge may—

- (a) postpone or adjourn the hearing of the appeal for such period and upon such terms as may be just;
- (b) give such judgment and make such order on the appeal as might have been given or made if the person served in pursuance of the direction had originally been a party.

**Application to state case treated as notice of appeal**

5.—(1) Where—

- (a) any party has applied to a county court judge to state a case under Article 61 of the Order; and
- (b) any other party lodges a notice of appeal against the decree under Article 60 of the Order;

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(49) S.I. 1980 No. 397 (N.I. 3)

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then, unless the parties otherwise agree, the application to state a case under Article 61 of the Order shall have effect as if it were a notice of appeal lodged under rule 2 against the decree.

(2) Subject to any direction by a judge, service of a copy of the application to state a case on the other party shall be deemed to be service for the purpose of rule 3.

(3) The proper officer, on the lodgment of the notice of appeal to which this rule applies, shall inform the applicant—

- (a) that a notice of appeal has been lodged under Article 60 of the Order; and
- (b) that unless the parties otherwise agree, his application to state a case shall have effect as if it were a notice of appeal against the decree under Article 60 of the Order.

(4) The parties shall inform the proper officer, not later than 14 days from the date of the lodgment of the notice of appeal, of any agreement reached between the parties concerning the manner of questioning the decision of the county court judge.

### **More than one appellant**

6.—(1) Where two or more parties each lodge a notice of appeal against the same decree the appeals shall be listed and heard together unless the judge otherwise directs.

(2) The judge may declare any one or more of the parties appealing to be separately entitled or liable to the costs of such appeal or any part thereof.

### **Venue**

7. The Court may, in accordance with section 58 of the Act, either of its own motion or on the application by summons of any party, direct that an appeal be listed for hearing outside the Royal Courts of Justice.

### **Lodgment not to be disclosed**

8. On the hearing of any appeal, in an action commenced by ordinary civil bill or remitted to the county court, where any money has been paid into the county court, that fact shall not be communicated to the judge until all questions of liability and the amount of the debt or damages have been decided, and the judge, in exercising a discretion as to costs, shall take into account both the fact that the money has been paid into the county court and the amount of such payment.

### **Stay of enforcement**

9. The lodgment of a notice of appeal shall not operate as a stay of enforcement on foot of the decree unless security is given for the costs of the appeal in accordance with directions to be given by the Master.

### **Withdrawal of appeal**

10.—(1) An appellant may withdraw his appeal by—

- (a) lodging a notice of withdrawal with the proper officer in the Central Office at least 2 clear days before the day fixed for the hearing of the appeal;
- (b) serving a copy of the notice of withdrawal at least 2 clear days before the day fixed for the hearing on every other party who was served with a notice of appeal; and
- (c) paying the costs appropriate to such withdrawal.

(2) Where an appeal is withdrawn or struck out the appeal shall be treated as having been dismissed by the Court.

### **Striking out an appeal**

11. Where an appellant fails to comply with any of the provisions of this Part, any other party may apply to a judge to have the appeal struck out.

### **Discharge of security, etc.**

12. Where the appeal is withdrawn or struck out—
- (a) any security given for costs shall abide the order of the Master; and
  - (b) any stay of enforcement under this Part shall stand discharged.

## **PART II**

### **APPEALS, REFERENCES AND APPLICATIONS UNDER STATUTORY PROVISIONS**

#### **Application**

13.—(1) Subject to paragraphs (2) and (3), an appeal to the High Court or a Judge thereof pursuant to the provisions of any statutory provision must be brought in accordance with the rules of this Part.

(2) This Part shall not apply to a county court appeal or an appeal by way of case stated.

(3) The following rules of this Part shall, in relation to an appeal to which this Part applies, have effect subject to any provision made in relation to that appeal by any other provisions of these Rules or by or under any statutory provision.

#### **Notice and entry of appeal**

14.—(1) Every appeal must be brought by originating motion entitled in the matter of the relevant statute and shall specify the grounds upon which the appellant relies.

(2) The appellant must, within 21 days from receiving notice of the judgment, order, decree, decision, determination or award against which he appeals, issue the notice of motion and enter the appeal for hearing in the office of the Division to which the subject-matter of the appeal is assigned.

#### **Service of notice of motion**

15.—(1) The appellant, on entering the appeal for hearing must within 21 days mentioned in rule 14, serve a copy of the notice of motion personally, or by sending it by prepaid post to every person affected by the appeal.

(2) The Court may direct that the notice of appeal be served upon such other person or persons in such manner as it may direct.

#### **Appeal books**

16. The appellant must, not later than 7 days after entering the appeal for hearing, lodge in the appropriate office one appeal book (unless the Master directs a different number) containing the following documents, namely—

- (a) the notice of motion;
- (b) the judgment, order, decree, decision; determination or award appealed against;
- (c) in the case of a reference, the reference;
- (d) the legal aid certificate, if any;
- (e) any other documents relevant to the appeal.

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### **Application for leave to appeal**

17. In any case where leave to appeal is required application for such leave may be made ex parte to a judge in the first instance.

### **Security for costs in tax cases**

18. In any appeal against the imposition of a tax or duty, the respondent may apply to a judge by motion on notice for an order staying the proceedings until the appellant shall pay into court or give security for the sum in dispute; and such order may be made therein as the judge may think fit.

### **References**

19. The rules of this Part shall apply mutatis mutandis to any case not otherwise provided for where by any statutory provision for the time being in force any matter or question, whether of law or of fact, may be submitted or referred to the court for its opinion thereon.

### **Applications**

20. Any application under the provisions of any statutory provision; not otherwise provided for (other than an application by way of appeal or reference) may be brought in the manner in which appeals may be brought under the foregoing rules of this Part.

### **Copies of orders**

21. The proper officer shall send a copy of any final order made under this Part to the court or tribunal concerned in the decision.

### **Application of Order 59**

22. The provisions of Order 59, rule 10 shall apply to an appeal or reference under this Part.

## **ORDER 56**

### **APPEALS TO THE HIGH COURT BY CASE STATED: GENERAL**

#### **Proceedings on case stated**

1.—(1) Subject to the provisions of any statutory provision or of these Rules, the party (hereinafter called “the applicant”) at whose instance a case has been stated by a court, tribunal or person on a point of law for the opinion of the High Court must, within 14 days after receiving it—

- (a) enter the appeal for hearing by lodging the case stated with a duly stamped requisition for hearing in the Central Office;
- (b) serve a copy of the case stated with the date of such entry endorsed thereon upon every other party to the appeal.

(2) Where a case may be stated for the opinion of the High Court under the provisions of any statutory provision and in so far as it makes no provision as to the procedure for stating and sending the case to the applicant then—

- (a) the requisition to state the case must be lodged with the court, tribunal or person within 6 weeks commencing on the day the decision complained of was sent to the applicant; and
- (b) the case must be settled by the court, tribunal or person and sent to the applicant within a period of 6 weeks commencing on the day the requisition was received.

### **Appeal books**

2. The applicant after entering an appeal for hearing must within 14 days lodge in the appropriate office an appeal book (unless the master otherwise directs) containing the following documents, namely—

- (a) the requisition to state a case;
- (b) the case stated;
- (c) the legal aid certificate (if any);
- (d) any other documents which may be relevant to the appeal.

### **Signing of case stated**

3. A case stated by a tribunal must be signed by the chairman as president of the tribunal and a case stated by any other person must be signed by him or by a person authorised in that behalf to do so.

### **Withdrawal of case stated**

4.—(1) The applicant or any other person having carriage of the appeal may at any time before the date fixed for hearing apply to the court by motion on notice to withdraw the appeal.

(2) On the hearing of an application to withdraw an appeal any other party may apply to proceed with the appeal in the place of the applicant.

### **Copies of orders**

5. The proper officer shall send a copy of any final order made under this Order to the court or tribunal concerned in the decision.

## **ORDER 57**

### **CROWN SIDE PROCEEDINGS: GENERAL**

#### **Custody of records**

1. The Master (Queen's Bench and Appeals) shall have the care and custody of the records and other proceedings on the Crown Side.

[E.r. 6]

#### **Affidavits**

2. Affidavits used on the Crown Side shall be intitled "In the High Court of Justice in Northern Ireland, Queen's Bench Division, Crown Side".

#### **Estreat of recognizances**

3.—(1) Every recognizance acknowledged in or removed into the Queen's Bench Division must be filed in the Crown Office.

(2) No recognizance shall be estreated without the order of a judge.

(3) Every application to estreat a recognizance in the Queen's Bench Division must be made by summons to a judge in chambers and must be supported by an affidavit showing in what manner the breach has been committed and proving that the summons was duly served.

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(4) A summons under this rule must be served at least 2 clear days before the day named therein for the hearing.

(5) On the hearing of the application the judge may, and if requested by any party shall, direct any issue of fact in dispute to be tried by a jury.

(6) If it appears to the judge that a default has been made in performing the conditions of the recognizance, the Judge may order the recognizance to be estreated.

#### **Issue of writs**

4.—(1) All writs on the Crown Side shall be issued out of the Crown Office.

(2) Every writ must be filed in the Crown Office together with the return thereto and a copy of any order made thereon.

[E.r. 5]

#### **Issue of motions**

5.—(1) Every motion in proceedings on the Crown Side must be issued out of the Crown Office.

(2) The party entering the motion for hearing must lodge in the Crown Office copies of the documents in the proceedings for the use of the Court at least 7 days before the day fixed for the hearing.

## **ORDER 58**

### **APPEALS FROM MASTERS, CIRCUIT REGISTRARS AND JUDGES**

#### **Appeals from certain decisions of masters, etc., to judge in chambers**

1.—(1) Without prejudice to Order 44, rule 23, and except as provided by rules 2 and 3, an appeal shall lie to a judge in chambers from any judgment, order or decision of a master, or of a circuit registrar in the exercise of any probate jurisdiction.

(2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice to attend before the judge on a day specified in the notice.

(3) Unless the Court otherwise orders, the notice must be issued within 5 days after the judgment, order or decision appealed against was given or made and served not less than 2 clear days before the day fixed for hearing the appeal.

(4) Except so far as the Court may otherwise direct, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought.

[E.r. 1]

#### **Appeals from certain decisions of the Master (Queen's Bench and Appeals)**

2. An appeal shall lie to the Court of Appeal from any judgment, order or decision of the Master (Queen's Bench and Appeals) given or made—

(a) on the hearing or determination of any cause, matter, question or issue tried before or referred to him under Order 36, rule 1, or

(b) on an assessment of damages under Order 37 or otherwise.

[E.r. 2]

### **Appeals from certain decisions of the Master (Chancery)**

3. An appeal shall lie to the Court of Appeal from any judgment, order or decision of the Master (Chancery) given or made on the hearing or determination of any cause; matter, question or issue ordered to be tried before him under Order. 36, rule 1.

[E.r. 3]

### **Appeal from a judge in chambers**

4. Subject to section 35 of the Act (which restricts appeals), and without prejudice to section 44 of the Act (which provides for an appeal in cases of contempt of court), an appeal shall lie to the Court of Appeal from any judgment, order or decision of a judge in chambers.

[E.r. 7]

### **Appeal from judgment, etc., of judge in interpleader proceedings**

5.—(1) Any judgment, order or decision of a judge given or made in summarily determining under Order 17, rule 3(2)(a) or (b), any question at issue between claimants in interpleader proceedings shall be final and conclusive against the claimants and all persons claiming under them unless leave to appeal to the Court of Appeal is given by the judge or the Court of Appeal.

(2) Where an interpleader issue is tried by a judge (with or without a jury), an appeal shall lie to the Court of Appeal, without the leave of the judge or that Court, from any judgment, order or decision given or made by the judge on the trial.

(3) The time within which notice of appeal under this rule must be served shall be the same as in the case of an appeal from an interlocutory order.

[E.r. 8]

## **ORDER 59**

### **APPEALS TO THE COURT OF APPEAL**

#### **Application of Order to appeals**

1. This Order applies, subject to the provisions of these Rules with respect to particular appeals, to every appeal to the Court of Appeal (including, so far as it is applicable thereto, any appeal to that Court from a master or from any tribunal from which an appeal lies to that Court) not being an appeal for which other provision is made by these Rules or by any other statutory provision.

[E.r. 1]

#### **Application of Order to applications for new trial**

2. This Order (except so much of rule 3(1) as provides that an appeal shall be by way of rehearing and except rule 11(1)) applies to an application to the Court of Appeal for a new trial or to set aside a verdict, finding or judgment after trial with or without a jury, as it applies to an appeal to that Court, and references in this Order to an appeal and to an appellant shall be construed accordingly.

[E.r. 2]

## GENERAL PROVISIONS AS TO APPEALS

### Notice of appeal

3.—(1) An appeal to the Court of Appeal shall be by way of rehearing and must be brought by motion, and the notice of the motion is referred to in this Order as “notice of appeal”.

(2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the court below; and every such notice must specify the grounds of the appeal and the precise form of the order which the appellant proposes to ask the Court of Appeal to make.

(3) Except with the leave of the Court of Appeal, the appellant shall not be entitled on the hearing of an appeal to rely on any grounds of appeal, or to apply for any relief, not specified in the notice of appeal.

(4) A notice of appeal must be served on all parties to the proceedings in the court below who are directly affected by the appeal; and, subject to rule 8, it shall not be necessary to serve the notice on parties not so affected.

(5) No notice of appeal shall be given by a respondent in a case to which rule 6(1) relates.

[E.r. 3]

### Time for appealing

4.—(1) Subject to the provisions of this rule, every notice of appeal must be served under rule 3(4) within the following period (calculated from the date on which the judgment or order of the court below was filed), that is to say:—

- (a) in the case of an appeal from an interlocutory order or from a judgment or order given or made under Order 14 or Order 86, 21 days;
- (b) in the case of an appeal from an order or decision made or given in the matter of the winding up of a company, or in the matter of any proceedings under the Bankruptcy Acts (Northern Ireland) 1857 to 1980, 21 days;
- (c) in any other case, 6 weeks.

(2) Where a summons to vary or discharge a certificate and the further consideration of an action are heard together, and an order is made on both, notice of appeal in respect of the order made on the summons may be served at any time before the expiration of the period within which notice of appeal could be served in respect of the order made on further consideration.

(3) In the case of an appeal from a decision in respect of which a certificate has been granted under section 12 of the Administration of Justice Act 1969(50) the period referred to in paragraph (1) shall be calculated from the end of the time during which, in accordance with section 13(5) of that Act, no appeal lies to the Court of Appeal.

[E.r. 4]

### Setting down appeal

5.—(1) The appellant must, within 7 days after service of the notice of appeal, or within such further time as the Master (Queen's Bench and Appeals) may allow, enter the appeal for hearing by lodging in the Central Office

- (a) 2 copies of the notice of appeal, of which one copy must be duly stamped and endorsed with particulars of service;

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(50) 1969 c. 58



(b) a copy of the judgment or order of the court below.

(2) Upon the appeal being entered it shall be listed for hearing not earlier than the date named in the notice or appeal, unless an earlier date is fixed at the request and with the written consent of both the appellant and the respondent.

### **Respondent's notice**

6.—(1) A respondent who, having been served with a notice of appeal, desires—

- (a) to contend on the appeal that the decision of the court below should be varied, either in any event or in the event of the appeal being allowed in whole or in part, or
- (b) to contend that the decision of the court below should be affirmed on grounds other than those relied upon by that court, or
- (c) to contend by way of cross-appeal that the decision of the court below was wrong in whole or in part,

must give notice to that effect, specifying the grounds of his contention and, in a case to which paragraph (a) or (c) relates, the precise form of the order which he proposes to ask the Court to make.

(2) Except with the leave of the Court of Appeal, a respondent shall not be entitled on the hearing of the appeal to apply for any relief not specified in a notice under paragraph (1) or to rely, in support of any contention, upon any ground which has not been specified in such a notice or relief upon by the court below.

(3) Any notice given by a respondent under this rule (in this Order referred to as a "respondent's notice") must be served on the appellant, and on all parties to the proceedings in the court below who are directly affected by the contentions of the respondent, and must be served—

- (a) where the notice of appeal related to an interlocutory order, within 7 days, and
- (b) in any other case, within 21 days,

after the service of the notice of appeal on the respondent.

(4) A party by whom a respondent's notice is given must, within 2 days after service of the notice, furnish two copies of the notice to the proper officer in the Central Office;

[E.r. 6]

### **Amendment of notice of appeal and respondent's notice**

7. A notice of appeal or respondent's notice may be amended by or with the leave of the Court of Appeal, at any time.

[E.r. 7]

### **Directions of the Court as to service**

8.—(1) The Court of Appeal may in any case direct that a notice of appeal or respondent's notice be served on any party to the proceedings in the court below on whom it has not been served, or on any person not party to those proceedings.

(2) The Court of Appeal may in any case where it gives a direction under this rule—

- (a) postpone or adjourn the hearing of the appeal for such period and on such terms as may be just, and
- (b) give such judgment and make such order on the appeal as might have been given or made if the persons served in pursuance of the direction had originally been parties.

[E.r. 8]

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### **Documents to be lodged by appellant**

9.—(1) Not less than 7 days before the appeal is likely to be listed for hearing the appellant must cause to be lodged in the Central Office the number of copies for which paragraph (2) provides of each of the following documents, namely—

- (a) the notice of appeal;
- (b) the respondent's notice;
- (c) the judgment or order of the court below;
- (d) the pleadings (including particulars), if any, and, in the case of an appeal in an Admiralty cause or matter, the preliminary acts, if any;
- (e) the transcript of the official shorthand note, if any, of the judgment or order of the court below or, in the absence of such a note, the judge's note of his reasons for giving the judgment or making the order;
- (f) such parts of the transcript of the official shorthand note, if any, of the evidence given in the court below as are relevant to any question at issue on the appeal or, in the absence of such a note, such parts of the judge's note of the evidence as are relevant to any such question;
- (g) any list of exhibits made under Order 35, rule 8, or the schedule of evidence, as the case may be;
- (h) such affidavits, exhibits, or parts of exhibits, as were in evidence in the court below and as are relevant to any question at issue on the appeal.

(2) The number of copies to be lodged in accordance with paragraph (1) is three unless the Master directs a different number.

[E.r. 9]

### **General powers of the Court**

10.—(1) In relation to an appeal the Court of Appeal shall have all the powers and duties as to amendment and otherwise of the High Court including, without prejudice to the generality of the foregoing words, the powers of the Court under order 36 to refer any question or issue of fact for trial before, or inquiry and report by, a master or referee.

(2) The Court of Appeal shall have power to receive further evidence on questions of fact, either by oral examination in court, by affidavit, or by deposition taken in accordance with Order 39 but, in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.

(3) The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.

(4) The powers of the Court of Appeal under the foregoing provisions of this rule may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the court below or by any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the Court of Appeal may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(5) The Court of Appeal may, in special circumstances,, order that such security shall be given for the costs of an appeal as may be just.

(6) The powers of the Court of Appeal in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.

(7) Documents impounded by order of the Court of Appeal shall not be delivered out of the custody of that Court except in compliance with an order of that Court :

Provided that where the Attorney General or the Director of Public Prosecutions, makes a written request in that behalf, documents so impounded shall be delivered into his custody.

(8) Documents impounded by order of the Court of Appeal, while in the custody of that Court, shall not be inspected except by a person authorised to do so by an order of that Court.

[E.r. 10]

### **Powers of the Court as to new trials**

11.—(1) On the hearing of any appeal the Court of Appeal may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgment of the court below.

(2) The Court of Appeal shall not be bound to order a new trial on the ground of misdirection, or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless in the opinion, of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned.

(3) A new trial may be ordered on any question without interfering with the finding or decision on any other question; and if it appears to the Court of Appeal that any such wrong or miscarriage as is mentioned in paragraph (2) affects part only of the matter in controversy, or one or some only of the parties, the Court may order a new trial as to that part only, or as to that party or those parties only, and give final judgment as to the remainder.

(4) In any case where the Court of Appeal has power to order a new trial on the ground that damages awarded by a jury are excessive or inadequate, the Court may, in lieu of ordering a new trial—

- (a) with the consent of all parties concerned, substitute for the sum awarded by the jury such sum as appears to the Court to be proper;
- (b) with the consent of the party entitled to receive or liable to pay the damages, as the case may be, reduce or increase the sum awarded by the jury by such amount as appears to the Court to be proper in respect of any distinct head of damages erroneously included in or excluded from the sum so awarded;

but except as aforesaid the Court of Appeal shall not have power to reduce or increase the damages awarded by a jury.

(5) A new trial shall not be ordered by reason of the ruling of any judge that a document is sufficiently stamped or does not require to be stamped.

[E.r. 11]

### **Evidence on appeal**

12. Where any question of fact is involved in an appeal, the evidence taken in the court below bearing on the question shall, subject to any direction of the Court of Appeal, be brought before that Court as follows :—

- (a) in the case of evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed;
- (b) in the case of evidence given orally, by a copy of so much of the transcript of the official shorthand note as is relevant or by a copy of the judge's note, where he has intimated that

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in the event of an appeal his note will be sufficient, or by such other means as the Court of Appeal may direct.

[E.r. 12]

**Stay of enforcement, etc.**

13.—(1) Except so far as the court below or the Court of Appeal may otherwise direct—

- (a) an appeal shall not operate as a stay of enforcement or of proceedings under the decision of the court below;
- (b) no intermediate act or proceeding shall be invalidated by an appeal.

(2) On an appeal from the High Court, interest for such time as enforcement has been delayed by the appeal shall be allowed unless the Court otherwise orders.

[E.r. 13]

**Applications to Court of Appeal**

14.—(1) Every application to the Court of Appeal shall be by motion, and the provisions of Order 8 shall apply thereto.

(2) Any application to the Court of Appeal for leave to appeal (other than an application made after the expiration of the time for appealing) must be made ex parte in the first instance; but unless the application is then dismissed or it appears to that Court that undue hardship would be caused by an adjournment, the Court shall adjourn the application and give directions for the service of notice thereof on the party or parties affected.

(3) Where an ex parte application has been refused by the court below, an application for a similar purpose may be made to the Court of Appeal ex parte within 7 days after the date of the refusal.

(4) Wherever under these Rules an application may be made either to the court below or to the Court of Appeal, it shall not be made in the first instance to the Court of Appeal, except where there are special circumstances which make it impossible or impracticable to apply to the court below.

[E.r. 14]

**Extension of time**

15. Without prejudice to the power of the Court of Appeal under Order 3, rule 5, to extend the time prescribed by any provision of this Order, the period for serving notice of appeal under rule 4 or for making application ex parte under rule 14(3) may be extended by the court below on application made before the expiration of that period.

[E.r. 15]

SPECIAL PROVISIONS AS TO PARTICULAR APPEALS

**Appeal relating to validity of a law**

16. Every appeal under section 35(5) of the Act shall be brought by giving notice of appeal in accordance with rule 3 and every such appeal shall be deemed to be an appeal from a judgment in an action and the rules of this Order shall apply accordingly.

**Appeal against order for revocation of patent**

17.—(1) The following provisions of this rule shall apply to any appeal to the Court of Appeal from an order for the revocation of a patent.

(2) The notice of appeal must be served on the Comptroller-General of Patents, Designs and Trade Marks (in this rule referred to as “the Comptroller”) as well as on the party or parties required to be served under rule 3.

(3) If, at any time before the appeal comes on for hearing, the respondent decides not to appear on the appeal or not to oppose it, he must forthwith serve notice of his decision on the Comptroller and the appellant, and any such notice served on the Comptroller must be accompanied by a copy of the petition or of the pleadings in the action and the affidavits filed therein.

(4) The Comptroller must, within 14 days after receiving notice of the respondent's decision, serve on the appellant a notice stating whether or not he intends to appear on the appeal.

(5) The Comptroller may appear and be heard in opposition to the appeal

(a) in any case where he has given notice under paragraph (4) of his intention to appeal, and

(b) in any other case (including, in particular, a case where the respondent withdraws his opposition to the appeal during the hearing) if the Court of Appeal so directs or allows.

(6) The Court of Appeal may make such orders for the postponement or adjournment of the hearing of the appeal as may appear to the Court necessary for the purpose of giving effect to the foregoing provisions of this rule.

#### **Appeals in cases of contempt of court**

18. In the case of an appeal to the Court of Appeal under section 44 of the Act, the notice of appeal must be served on the proper officer of the court from whose order or decision the appeal is brought, as well as on the party or parties required to be served under rule 3.

## ORDER 60

### APPEALS TO COURT OF APPEAL FROM THE RESTRICTIVE PRACTICES COURT

#### **Appeal to be brought by motion**

1. An appeal to the Court of Appeal from the Restrictive Practices Court under the Restrictive Practices Court Act 1976(51) must be brought by motion, and the notice of the motion must state the question of law on which the appeal is brought and the appellant's contentions thereon.

[E.r. 1]

#### **Service of notice of motion**

2.—(1) Within 21 days after the appellant receives a copy of the judgment constituting the case stated by the Restrictive Practices Court he must serve the notice of motion and a copy of the judgment on every other party to the proceedings before that Court and must serve the notice of motion on the proper officer of that Court.

(2) Where the appellant applies to the said Court for the Court's judgment to be amplified or amended—

(a) he shall be deemed for the purpose of paragraph (1) to have received a copy of the judgment on the date on which he receives a copy of the order made on his application, and

(b) the judgment constituting the case stated shall be the judgment with such amplifications or amendments, if any, as may be specified in that order.

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[E.r. 2]

### **Entry, etc. of appeal**

3.—(1) Within 7 days after service of the notice of motion, the appellant must lodge the judgment constituting the case and two copies of the notice with the proper officer of the Court of Appeal who shall enter the appeal in the appropriate list; and the appeal shall not be heard until after the expiration of 21 days from the date of entry.

(2) The proper officer of the Court of Appeal shall notify the proper officer of the Restrictive Practices Court of the decision of the Court of Appeal on the appeal and of any directions given by the Court of Appeal thereon.

[E.r. 3]

### **Powers of Court of Appeal**

4. The Court of Appeal shall have power to draw inferences of fact from the facts set forth in the judgment of the Restrictive Practices Court constituting the case.

[E.r. 4]

## **ORDER 61**

### **APPEALS FROM COURTS, TRIBUNALS, ETC., TO THE COURT OF APPEAL BY CASE STATED**

#### **Proceedings on case stated**

1.—(1) Subject to any statutory provision, the party (hereinafter called “the applicant”) at whose instance a case has been stated by a court, tribunal or person on a point of law for the opinion of the Court of Appeal must, within 14 days after receiving it—

- (a) enter the appeal for hearing by lodging the case stated with a duly stamped requisition for hearing in the Central Office;
- (b) serve upon every other party to the appeal a copy of the case stated with the date of such entry endorsed thereon.

(2) Where a case may be stated for the opinion of the Court of Appeal under any statutory provision and in so far as it makes no provision as to the procedure for stating and sending the case to the applicant, then—

- (a) the requisition to state the case must be lodged with the court, tribunal or person within 6 weeks commencing on the day the decision complained of was sent to the applicant; and
- (b) the case must be settled by the court, tribunal or person and sent to the applicant within a period of 6 weeks commencing on the day the requisition was received.

#### **Appeal books**

2. The applicant must within 14 days after entering an appeal for hearing lodge in the Central Office 3 appeal books (unless the Master directs a different number) containing the following documents, namely—

- (a) the requisition to state a case;
- (b) the case stated;
- (c) the legal aid certificate (if any);

- (d) any other documents which may be relevant to the appeal.

#### **Withdrawal of case stated**

3.—(1) The applicant or any other person having carriage of the appeal may at any time before the date fixed for hearing apply to the Court of Appeal by motion to withdraw the appeal.

(2) On the hearing of an application to withdraw an appeal any other party may apply to proceed with the appeal in the place of the applicant.

#### **Application for order to state case**

4. An application to the Court of Appeal or a judge thereof for an order directing a court or tribunal to state a case must be made by motion within a period of 14 days commencing on the date of the refusal or failure of the court or tribunal to state the case.

#### **Application to High Court to state case**

5.—(1) An application under Article 62 of the County Courts (Northern Ireland) Order 1980(52), to the High Court to state a case for, the opinion of the Court of Appeal upon a point of law arising on an appeal shall be made by lodging a requisition into the Central Office within a period of 24 days commencing on the date on which the decision was given and the requisition shall be served on the other party.

(2) The requisition shall specify the point of law upon which the applicant wishes to have the opinion of the Court of Appeal.

(3) The proper officer shall inform the parties of the result of the application.

#### **Judge to settle case stated**

6.—(1) A case stated under Article 62 of the said Order shall, after such reference to the parties as he may think desirable, be settled by the judge who shall transmit the case stated to the applicant through the Central Office.

(2) The applicant on receipt of the case stated shall enter it for hearing in accordance with rule 1.

#### **Signing of case stated**

7. A case stated by a tribunal must be signed by the chairman or president of the tribunal and a case stated by any other person must be signed by him or by a person authorised in that behalf to do so.

#### **Copies of orders**

8. The proper officer shall send a copy of any final order made under this Order to the court or tribunal concerned in the decision.

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**ORDER 62**  
**COSTS**  
**PRELIMINARY**

**Interpretation**

1.—(1) In this Order—

“certificate” includes allocatur;

“contentious business” and non-contentious business” have the same meanings respectively as in the Solicitors (Northern Ireland) Order 1976(53);

“costs” includes fees, charges, disbursements, expenses and remuneration;

“the Court” means the High Court, the Court of Appeal or any one or more judges thereof, whether sitting in court or in chambers, or any master;

“taxed costs” means costs taxed in accordance with this Order;

“Taxing Master” means the Master (Taxing Office).

(2) In this Order reference to a fund, being a fund out of which costs are to be paid or which is held by a trustee or personal representative, include references to any estate or property, whether real or personal, held for the benefit of any person or class of persons; and references to a fund held by a trustee or personal representative include references to any fund to which he is entitled (whether alone or together with any other person) in that capacity, whether the fund is for the time being in his possession or not.

[E.r. 1]

**Application**

2.—(1) This Order shall have effect—

(a) subject to the provisions contained in any statutory provision passed subsequent to the Act and to the provisions of any other statutory provision save in so far as such last mentioned provisions are inconsistent with the rules of this Order;

(b) in relation to all civil proceedings in the High Court and Court of Appeal;

(c) in relation to all criminal proceedings in the Queen's Bench Division or Court of Appeal other than trial at bar in the Queen's Bench Division of an indictment or inquisition or the trial of an information filed ex officio by the Attorney General.

(2) Where by virtue of any statutory provision the costs of or incidental to any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any statutory provision, not being proceedings in the Supreme Court, are taxable in the High Court, the following provisions of this Order, that is to say, rule 7(4) and (5), rule 8(6), rules 14(1) and 15, rule 16(1), rule 17, rule 20 (except paragraph (3)), rules 21 to 25 and rules 35 to 37, shall have effect in relation to proceedings for taxation of those costs as they have effect in relation to proceedings for taxation of the costs of or arising out of the proceedings in the Supreme Court.

(3) This Order shall have effect subject to rules 29 and 30 (which limit the costs recoverable in relation to certain proceedings).

(4) The powers and discretion of the Court as to costs under section 59 of the Act (which provides, subject as therein, that the costs of and incidental to all proceedings in the High Court and the Court

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(53) S.I. 1976 No. 582 (N.I. 12)



of Appeal shall be in the discretion of the Court) shall be exercised subject to and in accordance with these Rules.

[E.r. 2]

## ENTITLEMENT TO COSTS

### **When costs follow the event**

3.—(1) Subject to the following provisions of this Order, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceedings except under an order of the Court.

(2) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

(3) The costs of and occasioned by any amendment made without leave in the writ of summons or any pleading shall be borne by the party making the amendment, unless the Court otherwise orders.

(4) The costs of and occasioned by any application to extend the time fixed by these rules, or any direction or order thereunder, for serving or filing any document or doing any other act (including the costs of any order made on the application) shall be borne by the party making the application, unless the Court otherwise orders.

(5) If a party on whom a notice to admit facts is served under Order 27, rule 2 refuses or neglects to admit the facts within 7 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts shall be paid by him, unless the Court otherwise orders.

(6) If a party—

- (a) on whom a list of documents is served in pursuance of any provision of Order 24, or
- (b) on whom a notice to admit documents is served under Order 27, rule 5, gives notice of non-admission of any of the documents in accordance with Order 27, rule 4(2) or 5(2), as the case may be, the costs of proving that document shall be paid by him, unless the Court otherwise orders.

(7) Where a defendant by notice in writing and without leave discontinues his counterclaim against any party or withdraws any particular claim made by him therein against any party, that party shall, unless the Court otherwise directs, be entitled to his costs of the counterclaim or his costs occasioned by the claim withdrawn, as the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.

(8) Where a plaintiff accepts money paid into court by a defendant who counterclaimed against him, then, if the notice of payment given by that defendant stated that he had taken into account and satisfied the cause of action or, as the case may be, all the causes of action in respect of which he counterclaimed, that defendant shall, unless the Court otherwise directs, be entitled to his costs of the counterclaim incurred to the time of receipt of the notice of acceptance by the plaintiff of the money paid into court.

(9) Where any person claiming to be a creditor—

- (a) seeks to establish his claim to a debt under any judgment or order in accordance with Order 44, or
- (b) comes in to prove his title, debt or claim in relation to a company in pursuance of any such notice as is mentioned in Order 102, rule 12,

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he shall, if his claim succeeds, be entitled to his costs incurred in establishing it, unless the Court otherwise directs, and, if his claim or any part of it fails, may be ordered to pay the costs of any person incurred in opposing it.

(10) Where a claimant is entitled to costs under paragraph (9), the amount of the costs shall be fixed by the Court unless it thinks fit to direct taxation and the amount fixed or allowed shall be added to the claimant's debt.

(11) Where a claimant (other than a person claiming to be a creditor), having established a claim to be entitled under a judgment or order in accordance with Order 44, has been served with notice of the judgment or order pursuant to rule 3 or 15 of that Order, he shall, if he enters an appearance, be entitled as part of his costs of action (if allowed) to costs incurred in establishing his claim, unless the Court otherwise directs; and where such a claimant fails to establish his claim or any part of it he may be ordered to pay the costs of any person incurred in opposing it.

(12) Where an application is made in accordance with Order 24, rule 8, or Order 29, rule 8, for an order under section 21 of the Administration of Justice Act 1969<sup>(54)</sup> or section 31 or 32 of the Administration of Justice Act 1970<sup>(55)</sup>, the person against whom the order is sought shall be entitled, unless the Court otherwise directs, to his costs of and incidental to the application and of complying with any order made thereon and he may, after giving the applicant 7 days' notice of his intention to do so, tax such costs and if they are not paid within 4 days after taxation, enter judgment for them.

(13) Subject to the Act, when issues in fact and law are raised upon a claim or counterclaim, the costs of the several issues respectively, both in law and fact, shall follow the event, unless the Court otherwise orders.

(14) Unless the Court shall otherwise direct, in any action on any judgment which might be registered under the Judgments Extension Act 1868<sup>(56)</sup> in Northern Ireland the party bringing such action shall not be entitled to recover any costs.

[E.r. 3]

### **Stage of proceedings at which costs to be dealt with**

4.—(1) Costs may be dealt with by the Court at any stage of the proceedings or after the conclusion of the proceedings; and any order of the Court for the payment of any costs may, if the Court thinks fit, and the person against whom the order is made is not an assisted person, require the costs to be paid forthwith notwithstanding that the proceedings have not been concluded.

(2) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal and of the proceedings connected with it, may be dealt with by the Court hearing the appeal; and in the case of any proceedings removed to the High Court from any other court, the costs, of the whole proceedings, both before and after the removal, may subject to any order of the court ordering the removal) be dealt with by the Court to which the proceedings are removed.

(3) Where under paragraph (2) the Court makes an order as to the costs of any proceedings before another court, rules 27, 33 and 34 shall not apply in relation to those costs, but, except in relation to costs of proceedings removed from a county court, the order—

- (a) shall specify the amount of the costs to be allowed, or
- (b) shall direct that the costs shall be assessed by the court before which the proceedings took place or taxed by an officer of that court, or
- (c) if the order is made on appeal from a county court in relation to proceedings in that court, may direct that the costs shall be taxed by the Taxing Master.

[E.r. 4]

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<sup>(54)</sup> 1969 c. 58

<sup>(55)</sup> 1970 c. 31

<sup>(56)</sup> 1868 c. 54

### **Special matters to be taken into account in exercising discretion**

5. The Court in exercising its discretion as to costs shall to such extent, if any, as may be appropriate in the circumstances, take into account—

- (a) any such offer of contribution as is mentioned in Order 16, rule 10, which is brought to its attention in pursuance of a reserved right to do so;
- (b) any payment of money into court and the amount of such payment.

[E.r. 5]

### **Restriction of discretion to order costs**

6.—(1) Notwithstanding anything in this Order or in section 59 of the Act—

- (a) the costs of every action, question and issue tried by a jury shall, subject to the following provisions of this rule, follow the event, unless upon the application of any party the Court at the trial shall for special cause shown in the order otherwise direct; any such direction may be discharged or varied by the Court of Appeal;
- (b) no order shall be made directing one party to pay to the other any costs of or incidental to an appeal or application for leave to appeal under section 6(2) of the Pensions Appeal Tribunals Act 1943(57);
- (c) unless the Court is of opinion that there was no reasonable ground for opposing the will, no order shall be made for the costs of the other side to be paid by the party opposing a will in a probate action who has given notice with his defence to the party setting up the will that he merely insists upon the will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the will;
- (d) except in special circumstances, no order shall be made giving more than one set of costs among all the opponents of a petition or originating summons for extension of the term of a patent under section 23, 24 or 25 of the Patents Act 1949(58), if the Court refuses the prayer of the petition or the relief sought by the summons.

(2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Court may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

[E.r. 6]

### **Costs arising from misconduct or neglect**

7.—(1) Where in any cause or matter any thing is done or omission is made improperly or unnecessarily by or on behalf of a party, the Court may direct that any costs to that party in respect of it shall not be allowed to him and that any costs occasioned by it to other parties shall be paid by him to them.

(2) Without prejudice to the generality of paragraph (1), the Court shall for the purpose of that paragraph have regard in particular to the following matters, that is to say—

- (a) the omission to do any thing the doing of which would have been calculated to save costs;

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(57) 1943 c. 39

(58) 1949 c. 87

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- (b) the doing of any thing calculated to occasion, or in a manner or at a time calculated to occasion, unnecessary costs;
- (c) any unnecessary delay in the proceedings.

(3) The Court may, instead of giving a direction under paragraph (1) in relation to, any thing done or omission made, direct the Taxing Master to inquire into it and, if it appears to him that such a direction as aforesaid should have been given in relation to it, to act as if the appropriate direction had been given.

(4) The Taxing Master shall, in relation to any thing done or omission made in the course of taxation and in relation to any failure to procure taxation, have the same power to disallow or to award costs as the Court has under paragraph (1) to direct that costs shall be disallowed to or paid by any party.

(5) Where a party entitled to costs fails to procure or fails to proceed with taxation, the Taxing Master in order to prevent any other parties being prejudiced by that failure, may allow the party so entitled a nominal or other sum for costs or may certify the failure and the costs of the other parties.

[E.r. 7]

#### **Personal liability of solicitor for costs**

8.—(1) Subject to the following provisions of this rule, where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the Court may make against any solicitor whom it considers to be responsible (whether personally or through a servant or agent) an order—

- (a) disallowing the costs as between the solicitor and his client; and
- (b) directing the solicitor to repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or
- (c) directing the solicitor personally to indemnify such other parties against costs payable by them.

(2) No order under this rule shall be made against a solicitor unless he has been given a reasonable opportunity to appear before the Court and show cause why the order should not be made, except where any proceeding in court or in chambers cannot conveniently proceed, and fails or is adjourned without useful progress being made,—

- (a) because of the failure of the solicitor to attend in person or by a proper representative; or
- (b) because of the failure of the solicitor to deliver any document for the use of the Court which ought to have been delivered or to be prepared with any proper evidence or account or otherwise to proceed.

(3) Before making an order under this rule the Court may, if it thinks fit, refer the matter (except in the cases excepted from paragraph (2)) to the Taxing Master for inquiry and report and direct the solicitor in the first place to show cause before the Taxing Master.

(4) The Court may, if it thinks fit, direct or authorise the Official Solicitor to attend and take part in any proceedings or inquiry under this rule, and may make such order as it thinks fit as to the payment of his costs.

(5) The Court may direct that notice of any proceedings or order against a solicitor under this rule shall be given to his client in such manner as may be specified in the direction.

(6) Where in any proceedings before the Taxing Master the solicitor representing any party is guilty of neglect or delay or puts any other party to any unnecessary expense in relation to those proceedings, the Taxing Master may direct the solicitor to pay costs personally to any of the parties to those proceedings; and where any solicitor fails to leave his bill of costs (with the documents required by this Order) for taxation within the time fixed by or under this Order or otherwise delays

or impedes the taxation, then, unless the Taxing Master otherwise directs, the solicitor shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.

(7) If, on the taxation of costs to be paid out of a fund, other than the legal aid fund, one-sixth or more of the amount of the bill for those costs is taxed off, the solicitor whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing his bill of costs and for attending the taxation.

(8) In any proceedings in which the party by whom the fees prescribed by the Orders as to Court fees are payable is represented by a solicitor, if the fees or any part of the fees payable under the said Orders are not paid as therein prescribed, the Court may, on the application of the official solicitor by summons, order the solicitor personally to pay that amount in the manner so prescribed and to pay the costs of the official solicitor of the application.

[E.r. 8]

### **Fractional or gross sum in place of taxed costs**

9.—(1) Subject to this Order, where by or under these rules or any order or direction of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs.

(2) Paragraph (1) shall not apply to costs which by or under any order or direction of the Court—

- (a) are to be paid to a receiver appointed by the High Court under section 91(1) of the Act in respect of his remuneration, disbursements or expenses; or
- (b) are to be assessed or settled by any master;

but rules 27, 28, 33 and 34 shall apply in relation to such assessment or settlement of costs which are to be assessed or settled as aforesaid as they apply in relation to the taxation of costs by the Taxing Master.

(3) Where a writ in an action is indorsed in accordance with Order 6, rule 2(1)(b), and judgment is entered in default of appearance or of defence for the amount claimed for costs (whether alone or together with any other amount claimed), paragraph (1) of this rule shall not apply to those costs; but if the amount claimed for costs as aforesaid is paid in accordance with the indorsement (or is accepted by the plaintiff as if so paid) the defendant shall nevertheless be entitled to have those costs taxed.

(4) The Court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled—

- (a) to a proportion specified in the direction of the taxed costs or to the taxed costs from or up to a stage of the proceedings so specified; or
- (b) to a gross sum so specified in lieu of taxed costs;

but where the person entitled to such a gross sum is a litigant in person, rule 28 shall apply with the necessary modifications to the assessment of the gross sum as it applies to the taxation of the costs of a litigant in person.

[E.r. 9, 10]

### **When a party may enter judgment for costs without an order**

10.—(1) Where a plaintiff by notice in writing and without leave either wholly discontinues his action against any defendant or withdraws any particular claim made by him therein against any defendant, the defendant may tax his costs of the action or his costs occasioned by the matter withdrawn, as the case may be, and, if the taxed costs are not paid within 4 days after taxation, may enter judgment for them.

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(2) If a plaintiff accepts money paid into court in satisfaction of the cause of action, or all the causes of action, in respect of which he claims, or if he accepts a sum or sums paid in respect of one or more specified causes of action and gives notice that he abandons the others, then subject to paragraph (4), he may, after 4 days from payment out and unless the Court otherwise orders, tax his costs incurred to the time of receipt of the notice of payment into court and 48 hours after taxation may enter judgment for his taxed costs.

(3) Where a plaintiff in an action for libel or slander against several defendants sued jointly accepts money paid into court by one of the defendants, he may, subject to paragraph (4), tax his costs and enter judgment for them against that defendant in accordance with paragraph (2).

(4) Where money paid into court in an action is accepted by the plaintiff after the trial or hearing has begun, the plaintiff shall not be entitled to tax his costs under paragraph (2) or (3).

[E.r. 10]

### **When order for taxation of costs not required**

11.—(1) Where an action, petition or summons is dismissed with costs, or a motion is refused with costs, or an order of the Court directs the payment of any costs, or any party is entitled Under rule 10 to tax his costs, no order directing the taxation of those costs need be made.

(2) Where a summons is taken out to set aside any proceeding on the ground of irregularity and the summons is dismissed but no direction is given as to costs, the summons is to be taken as having been dismissed with costs.

[E.r. 11]

### **Application for order for taxation under the Solicitors (Northern Ireland) Order 1976 or the Solicitors (Ireland) Act 1849**

12.—(1) An application under Article 66(1) of the Solicitors (Northern Ireland) Order 1976 or, subject to paragraph (2), an application under the Solicitors (Ireland) Act 1849(59) may be made by originating summons; and the Court may on such application, if the Court thinks fit, refer any bill of costs (the subject of such application) for taxation, with such directions and subject to such conditions as the Court may think proper.

(2) An application for an order under Article 66(2) of the Solicitors (Northern Ireland) Order 1976 or, subject to paragraph (3), an application for an order for delivery of a bill of costs and for the taxation thereof or for the taxation of a bill of costs already delivered under the Solicitors (Ireland) Act 1849 shall be made to the Taxing Master in accordance with the provisions of this rule.

(3) No application under the provisions of the Solicitors (Ireland) Act 1849 shall be made pursuant to paragraph (2) where—

- (a) the retainer of the solicitor is disputed; or
- (b) the bill of costs has been paid by the party chargeable therewith; or
- (c) in any other case where special circumstances must be shown before an order for delivery of a bill of costs or for taxation of that bill or of any bill already delivered may be made.

(4) An application under paragraph (2) shall be in Form 1 or 2 in Appendix 5 to this Order and shall be served, together with an affidavit of facts, at least 4 clear days prior to the time specified therein for the hearing of the application.

(5) Where the bill of costs to which the application relates has already been delivered, a copy of that bill with the particulars of delivery to the person chargeable therewith indorsed thereon shall be lodged in the Supreme Court Taxing Office at the time the notice of the application is issued.

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(59) 1849 c. 53

(6) Subject to any statutory provision, to any order or direction of the Court and to review under rules 35 to 37, the costs of all proceedings before the Taxing Master under this rule shall be in his discretion.

(7) The same proceedings as nearly as possible shall be had in relation to an appeal under Article 68(6) of the Solicitors (Northern Ireland) Order 1976 as on a review of a taxation pursuant to an order of the Court and, accordingly, the provisions of rules 35 to 37 shall apply.

#### POWERS OF TAXING MASTER

##### **Powers of Taxing Master**

13.—(1) The Taxing Master shall have power to tax—

- (a) the costs of or arising out of any cause or matter in the Supreme Court,
- (b) the costs directed by an award made on a reference to arbitration under any statutory provision or pursuant to an arbitration agreement to be paid,
- (c) any other costs the taxation of which is directed by an order of the Court, and
- (d) any costs which are directed to be taxed or settled by the Taxing Master of the Supreme Court under any statutory provision.

(2) Where by or under any statutory provision or an order of the Court any costs are directed to be taxed or settled only the Taxing Master shall have power to tax or settle those costs.

[E.r. 12]

##### **Supplementary powers of Taxing Master**

14.—(1) The Taxing Master may, in the discharge of his functions with respect to the taxation of costs—

- (a) take an account of any dealings in money made in connection with the payment of the costs being taxed, if the Court so directs;
- (b) require any party represented jointly with any other party in any proceedings before him to be separately represented;
- (c) examine any witness in those proceedings;
- (d) direct the production of any document which may be relevant in connection with those proceedings;
- (e) request any master to transmit to him any books, papers or documents relating to the cause or matter and to certify any proceedings before such master the costs of which may be comprised in the bill of costs under taxation.

(2) Where the taxation of costs relates to a solicitor's bill of costs to his own client in respect of any contentious business, the Taxing Master shall ascertain the credits, if any, to which the client is entitled and for this purpose the solicitor shall, at the time of lodging his bill of costs for taxation, annex thereto or indorse thereon a certificate in the form prescribed by the Taxing Master, signed by him, showing what money has been received by him or his firm from any person and the manner in which such money has been dealt with.

[E.r. 14]

##### **Extension, etc. of time**

15.—(1) The Taxing Master may—

- (a) extend the period within which a party is required by or under this Order to begin proceedings for taxation or to do anything in or in connection with proceedings before him;

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(b) where no period is specified by or under this Order or by the Court for the doing of anything in or in connection with such proceedings, specify the period within which the thing is to be done.

(2) Where an order of the Court specifies a period within which anything is to be done by or before the Taxing Master, then, unless the Court otherwise directs, the Taxing Master may from time to time extend the period so specified on such terms (if any) as he thinks just.

(3) The Taxing Master may extend any such period as is referred to in the foregoing provisions of this rule although the application for extension is not made until after the expiration of that period.

[E.r. 16]

### **Interim certificates**

16.—(1) The Taxing Master may from time to time in the course of the taxation of any costs by him issue an interim certificate for any part of those costs which has been taxed.

(2) If, in the course of the taxation of a solicitor's bill to his own client, it appears to the Taxing Master that in any event the solicitor will be liable in connection with that bill to pay money to the client, he may from time to time issue an interim certificate specifying an amount which in his opinion is payable by the solicitor to his client.

(3) Unless the amount specified in an interim certificate issued under paragraph (2) is paid within 4 days from the date of the certificate the party entitled to payment may take the same proceedings to enforce payment as if payment was to be made pursuant to a final certificate.

[E.r. 17]

### **Power of Taxing Master where party liable to be paid and to pay costs**

17. Where a party entitled to be paid costs is also liable to pay costs, the Taxing Master may—

- (a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance, or
- (b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

[E.r. 18]

### **Taxation of bill of costs comprised in account**

18.—(1) Where the Court directs an account to be taken and the account consists in part of a bill of costs, the Court may direct the Taxing Master to tax those costs and the Taxing Master shall tax the costs in accordance with the direction and shall return the bill of costs, after taxation thereof, together with his report thereon to the Court.

(2) The Taxing Master taxing a bill of costs in accordance with a direction under this rule shall have the same powers, and the same fees shall be payable in collection with the taxation, as if an order for taxation of the costs had been made by the Court.

[E.r. 19]

### **Taxing Master to fix certain fees payable to conveyancing counsel, etc.**

19.—(1) Where the Court refers any matter to the conveyancing counsel of the Court or obtains the assistance of any other person under Order 32, rule 15, the fees payable to counsel or that other person in respect of the work done by him in connection with the reference or, as the case may be, in assisting the Court shall be fixed by the Taxing Master.



(2) An appeal from the decision of the Taxing Master under this rule shall lie to the Court, and the decision of the Court thereon shall be final.

[E.r. 20]

## PROCEDURE ON TAXATION

### **Mode of beginning proceedings for taxation**

20.—(1) A party entitled to require any costs to be taxed must begin proceedings for the taxation of those costs by producing the requisite document and leaving a copy thereof at the Taxing Office.

(2) The requisite document for the purposes of this rule shall be ascertained in accordance with the provisions of Appendix 1 to this Order.

(3) Subject to paragraph (4) where a party is entitled to require any costs to be taxed by virtue of—

- (a) a judgment, direction or order given or made in proceedings in the Supreme Court, or
- (b) rule 10,

he must begin proceedings for the taxation of those costs within 6 months after the judgment, direction or order was entered, signed or otherwise perfected or, as the case may be, within 6 months after service of the notice given to him under Order 21, rule 2 (where he is so entitled by virtue of rule 10(1)) or given by him under Order 22, rule 3 (where he is so entitled by virtue of rule 10(2) or (3)).

(4) In relation to the taxation of costs pursuant to an order under the Solicitors (Ireland) Act 1849 paragraph (3) shall have effect as if for the period of 6 months first mentioned in that paragraph there were substituted a reference to 21 days.

(5) A party who begins proceedings for taxation must at the same time lodge in the Taxing Office :—

- (a) a statement containing the following particulars, that is to say—
  - (i) the name of every party, and the capacity in which he is a party, to the proceedings, his position on the record of the proceedings which gave rise to the taxation proceedings, and, if any costs to which the taxation proceedings relate are to be paid out of a fund, the nature of his interest in the fund, and
  - (ii) the address of any party to the proceedings who appears in person and the name or firm and business address of the solicitor of any party who does not appear, and
- (b) unless the Taxing Master otherwise directs, the bill of costs together with all necessary papers and vouchers.

[E.r. 21]

### **Notification of time appointed for taxation**

21.—(1) Where proceedings for taxation have been dilly begun in accordance with rule 20, then, subject to paragraphs (2) and (3) of this rule and rule 23, the proper officer shall give to the party beginning the proceedings and to any other party entitled to be heard in the taxation proceedings, not less than 7 days' notice of the day and time appointed for taxation.

(2) A notice under this rule need not be given to any party who has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings :

Provided that this paragraph shall not apply where an order for the taxation of a solicitor's bill of costs made under rule 12 at the instance of the solicitor gave rise to the taxation proceedings.

[E.r. 22]

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### **Delivery of bills, etc.**

22.—(1) Where a party has begun proceedings for taxation in accordance with rule 20, then, subject to rule 23, the proper officer shall as soon as practicable give notice to any other party whose costs are to be taxed in the proceedings of the period within which his bill of costs together with all necessary papers and vouchers are to be sent to the Taxing Master.

(2) A party whose costs are to be taxed in any taxation proceedings, except a solicitor whose costs are to be taxed by virtue of an order made under rule 12, must within 4 days after beginning the proceedings or, as the case may be, receiving notice under paragraph (1) send a copy of his bill of costs to every other party entitled to be heard in the proceedings unless that party has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.

[E.r. 23]

### **Short and urgent taxation proceedings**

23.—(1) Where a party entitled to require taxation of any costs of or arising out of proceedings in the Supreme Court begins proceedings for the taxation of those costs in accordance with rule 20, then, if, when he begins such proceedings, he satisfies the proper officer—

- (a) that, in view of the amount of any bill of costs to be taxed, the time required for taxation is likely to be short, and
- (b) that the speedy completion of the taxation is necessary in the interests of any person concerned in the taxation,

the proper officer shall enter the proceedings for taxation in a list kept for the purposes of this rule and shall forthwith give notice of the day and time appointed for taxation to the party whose costs are to be taxed.

(2) A party whose costs are to be taxed in proceedings entered for taxation in the list referred to in paragraph (1) must, subject to paragraph (3), not less than 2 days before the day appointed for taxation send a copy of his bill of costs to every other party entitled to be heard in the proceedings with a notice of the day and time appointed for taxation.

(3) A notice under paragraph (2) need not be given to any party who has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.

[E.r. 24]

### **Provisions as to bills of costs**

24.—(1) In any solicitor's bill of costs the professional charges and the disbursements must be entered in separate columns and every column must be cast before the bill is left for taxation.

(2) Before a solicitor's bill of costs is left for taxation it must be endorsed with the name or firm and business address of the solicitor whose bill it is.

[E.r. 25]

### **Provisions as to taxation proceedings**

25.—(1) If any party entitled to be heard in any taxation proceedings does not attend within a reasonable time after the time appointed for the taxation, the Taxing Master, if satisfied by affidavit or otherwise that the party had due notice of the time appointed, may proceed with the taxation.

(2) The Taxing Master may, if he thinks necessary to do so; adjourn any taxation proceedings from time to time.

[E.r. 26]

### **Powers of Taxing Master taxing costs payable out of fund**

26.—(1) Where any costs are to be paid out of a fund the Taxing Master may give directions as to the parties who are entitled to attend on the taxation of those costs and may disallow the costs of attendance of any party not entitled to attend by virtue of the directions and whose attendance he considers unnecessary.

(2) Where the Court has directed that a bill of costs be taxed for the purpose of being paid out of a fund the Taxing Master may, if he thinks fit, adjourn the taxation for a reasonable period and direct the party whose bill it is to send to any person having an interest in the fund a copy of the bill, or of any part thereof, free of charge together with a letter containing the following information, that is to say—

- (a) that the bill of costs, a copy of which or of part of which is sent with the letter, has been referred to the Taxing Master for taxation;
- (b) the time appointed by the Taxing Master at which the taxation will be continued; and
- (c) such other information, if any, as the Taxing Master may direct.

[E.r. 27]

### **ASSESSMENT OF COSTS**

#### **Costs payable to one party by another or out of a fund**

27.—(1) This rule applies to costs which by or under these Rules or any order or direction of the Court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund (other than a fund which the party to whom the costs are to be paid holds as trustee or personal representative) and shall have effect subject to rule 28.

(2) Subject to the following provisions of this rule, costs to which this rule applies shall be taxed on the party and party basis, and on a taxation on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed.

(3) Subject to paragraph (6) the Court in awarding costs to which this rule applies may in any case in which it thinks fit to do so order or direct that the costs shall be taxed on the common fund basis.

(4) On a taxation on the common fund basis, being a more generous basis than that provided for by paragraph (2), there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and paragraph (2) shall not apply; and accordingly in all cases where costs are to be taxed on the common fund basis the ordinary rules applicable on a taxation as between solicitor and client where the costs are to be paid out of a common fund in which the client and others are interested shall be applied, whether or not the costs are in fact to be so paid.

(5) The Court in awarding costs to which this rule applies to any person may if it thinks fit and if:—

- (a) the costs are to be paid out of a fund, or
- (b) the person to whom the costs are to be paid is or was a party to the proceedings in the capacity of trustee or personal representative,

order or direct that the costs shall be taxed as if that person were a trustee of the fund or as if the costs were to be paid out of a fund held by that person, as the case may be, and where the Court so orders or directs rule 33(2) shall have effect in relation to the taxation in substitution for paragraph (2) of this rule.

(6) Paragraph (3) shall not apply to any proceeding for the recovery of a penalty.

[E.r. 28]

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### **Costs of a litigant in person**

28.—(1) On a taxation of the costs of a litigant in person there may, subject to the provisions of this rule, be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by a solicitor on the litigant's behalf.

(2) The amount allowed in respect of any item shall be such sum as the Taxing Master thinks fit not exceeding, except in the case of a disbursement, two-thirds of the sum which in the opinion of the Taxing Master would have been allowed in respect of that item if the litigant had been represented by a solicitor.

(3) Where in the opinion of the Taxing Master the litigant has not suffered any pecuniary loss in doing any work to which the costs relate, he shall not be allowed in respect of the time reasonably spent by him on the work more than £2 an hour.

(4) A litigant who is allowed costs in respect of attending court to conduct his own case shall not be entitled to a witness allowance in addition.

(5) Nothing in Order 6, rule 2(b), or rule 34(4) or Appendix 3 to this Order shall apply to the costs of a litigant in person.

(6) For the purposes of this rule a litigant in person does not include a litigant who is a practising solicitor.

[E.r. 28A]

### **Limitations on the amount of costs recoverable where proceedings could have been brought in the county court**

29.—(1) This rule applies to costs which by or under these Rules are to be taxed in accordance with the provisions of rule 27(2).

(2) Subject to the provisions of any statutory provision and save in cases within Order 14 or rule 34(5), in any proceedings which were commenced in the High Court but which, having regard to the subject matter thereof, to the amount recovered or relief awarded, could have been brought in the county court the plaintiff shall not be entitled to any more costs than those which he could have recovered if the proceedings had been brought in the county court unless the parties otherwise agree or, by reason of the question of law or issues of fact involved or the extent of the right to property affected or the full amount of the claim or other circumstances, the judge shall otherwise direct.

(3) In cases to which paragraph (2) applies where the full amount of the claim exceeds the amount which could have been claimed in proceedings brought in the county court, the plaintiff shall, unless the judge otherwise directs, and without prejudice to any direction under paragraph (2), be entitled to recover one-half of his costs.

(4) For the purposes of paragraph (2) the full amount of the claim shall be deemed to be the amount quantified by the Court for which judgment could have been entered if the Court had not made any deduction in respect of the claimant's own fault.

(5) Where a plaintiff is entitled to costs on a county court scale only, the Taxing Master shall have the same discretion to allow any item of costs as the judge of the county court would have had if the action had been brought in that court.

(6) The provisions of this rule shall not apply where any defendant has successfully opposed the remittal of the proceedings to the county court which was sought or concurred in by the plaintiff.

### **Further limitations on the amount of costs recoverable**

30.—(1) Where in pursuance of any direction by the Court draft documents are settled by any counsel appointed by the Court the costs of having those draft documents prepared or subsequently

settled by other counsel on behalf of the same parties for whom such draft documents are settled by the counsel appointed by the Court shall not be allowed.

(2) In any action for libel where the jury shall give damages under £2 the plaintiff shall not be entitled to more costs than damages.

(3) Unless the Court otherwise directs the plaintiff who brings more than one action upon a negotiable instrument shall not be entitled to recover more than one half of his costs in such second or subsequent action.

(4) In any action for words spoken under the Slander of Women Act 1891<sup>(60)</sup> a plaintiff shall not recover more costs than damages unless the Court shall certify that there was reasonable ground for bringing the action.

(5) Paragraph (1) shall only apply to taxations pursuant to rule 27(2) and (4).

(6) Paragraphs (2), (3) and (4) of this rule shall only apply to taxations pursuant to rule 27(2).

#### **Costs payable to a solicitor by his own client**

31.—(1) On the taxation of a solicitor's bill to his own client (except a bill to be paid out of the legal aid fund under the Legal Aid and Advice Act (Northern Ireland) 1965<sup>(61)</sup>, or a bill with respect to non-contentious business) all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.

(2) For the purposes of paragraph (1), all costs incurred with the express or implied approval of the client shall, subject to paragraph (3), be conclusively presumed to have been reasonably incurred and, where the amount thereof has been expressly or impliedly approved by the client, to have been reasonable in amount.

(3) For the purposes of paragraph (1), any costs which in the circumstances of the case are of an unusual nature and such that they would not be allowed on a taxation of costs in a case to which rule 27(Z) applies shall, unless the solicitor expressly informed his client before they were incurred that they might not be so allowed, be presumed, until the contrary is shown, to have been unreasonably incurred.

(4) In paragraphs (2) and (3) the references to the client shall be construed—

- (a) if the client was at the material time incapable by reason of mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961<sup>(62)</sup> of managing and administering his property and affairs and represented by a person acting as guardian ad litem or next friend, as references to that person acting, where necessary, with the authority of the authority having jurisdiction under that Act;
- (b) if the client was at the material time an infant and represented by a person acting as guardian ad litem or next friend, as references to that person.

[E.r. 29]

#### **Costs payable to solicitor where money recovered by or on behalf of minor, etc.**

32.—(1) This rule applies to—

- (a) any proceedings in which money is claimed or recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person who is a minor or incapable, by reason of mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961 of managing or administering his property and affairs or in which money paid into court is accepted by or on behalf of such a person, and

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<sup>(60)</sup> 1891 c. 51

<sup>(61)</sup> 1965 c. 8 (N.I.)

<sup>(62)</sup> 1961 c. 15 (N.I.)

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- (b) any proceedings under the Fatal Accidents (Northern Ireland) Order 1977(63) in which money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, the widow of the person whose death gave rise to the proceedings in satisfaction of a claim under the said Order or in which money paid into court is accepted by her on her behalf in satisfaction of such a claim, if the proceedings were for the benefit also of a person who, when the money is recovered, or adjusted or ordered or agreed to be paid, or accepted, is a minor, and
- (c) any proceedings in the Court of Appeal on an application or appeal made in connection with any proceedings to which this rule applies by virtue of the foregoing provisions of this paragraph.

(2) Unless the Court otherwise directs the costs payable to his solicitor by any plaintiff in any proceedings to which this rule applies by virtue of paragraph (1)(a) or (b), being the costs of those proceedings or incidental to the claim therein or consequent thereon, shall be taxed under rule 31; and no costs shall be payable to the solicitor or any plaintiff in respect of those proceedings except such amount of costs as may be certified in accordance with this rule on the taxation under rule 31 of the solicitor's bill to that plaintiff.

(3) On the taxation under rule 31 of a solicitor's bill to any plaintiff in any proceedings to which this rule applies by virtue of paragraph 1(a) or (b) who is his own client, the Taxing Master shall also tax any costs payable to that plaintiff in those proceedings and shall certify—

- (a) the amount allowed on the taxation under rule 31, the amount allowed on the taxation of any costs payable to that plaintiff in those proceedings and the amount (if any) by which the first-mentioned amount exceeds the other, and
- (b) where necessary, the proportion of the amount of the excess payable respectively by, or out of money belonging to, any party to the proceedings who is a minor or incapable, by reason of mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961, of managing and administering his property and affairs or the widow of the person whose death gave rise to the proceedings and any other party.

(4) Paragraphs (2) and (3) shall apply in relation to any proceedings to which this rule applies by virtue Of paragraph (1)(c) as if for references to a plaintiff there were substituted references to the party, whether appellant or respondent, who was the plaintiff in the proceedings which gave rise to the first-mentioned proceedings.

(5) Nothing in the foregoing provisions of this rule shall prejudice a solicitor's lien for costs.

(6) Where in any proceedings to which this rule applies directions given by the Court under Order 80, rule 10, provide for the transfer or payment of money to or into county court for the payment to the solicitor of any plaintiff in the proceedings of an amount in respect of costs out of the money so transferred or paid, the Taxing Master shall send a copy of his certificate to the county court.

(7) Nothing in this rule shall prejudice the power of the Court to order the payment of a specified gross sum for costs as part of the terms upon which the settlement of the claim is approved.

(8) The foregoing provisions of this rule shall apply in relation to—

- (a) a counterclaim by or on behalf of a person who is a minor or incapable, by reason of mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961; of managing and administering his property and affairs and a counterclaim consisting of or including a claim under the Fatal Accidents (Northern Ireland) Order 1977 by or on behalf of the widow of the person whose death gave rise to the claim, and
- (b) a claim made by or on behalf of a person who is an infant or incapable as aforesaid ill an action by any other person for relief under section 504 of the Merchant Shipping

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(63) S.I. 1977 No. 1251 (N.I. 18)

Act 1894(64); and a claim consisting of or including a claim under the Fatal Accidents (Northern Ireland) Order 1977 made by or on behalf of that widow in such an action; as if for references to a plaintiff there were substituted references to a defendant.

[E.r. 30]

#### **Costs payable to a trustee out of the trust fund, etc.**

33.—(1) This rule applies to every taxation of the costs which a person who is or has been a party to any proceedings in the capacity of trustee or personal representative is entitled to be paid out of any fund which he holds in that capacity.

(2) On any taxation to which this rule applies, no costs shall be disallowed except in so far, as those costs or any part of their amount should not, in accordance with the duty of the trustee or personal representative as such, have been incurred or paid, and should for that reason be borne by him personally.

[E.r. 31]

#### **Scales of costs**

34.—(1) Subject to the foregoing rules and the following provisions of this rule, the scale of costs contained in Appendix 2 to this Order, together with the notes and general provisions contained in that Appendix, shall apply to the taxation of all costs incurred in relation to contentious business done on or after 1st January 1981.

(2) On a taxation in relation to which rule 31 or rule 33(2) has effect and in other special cases costs may at the discretion of the Taxing Master be allowed—

- (a) in relation to items not mentioned in the said scale; or
- (b) of an amount higher than that prescribed by the said scale.

(3) Where the amount of a solicitor's remuneration in respect of non-contentious business connected with sales, purchases, leases, mortgages and other matters of conveyancing or in respect of any other non-contentious business is regulated (in the absence of agreement to the contrary) by any general orders for the time being in force under the Solicitors (Northern Ireland) Order 1976, the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same, notwithstanding anything in the scales contained in Appendix 2 to this Order.

(4) Notwithstanding paragraph (1), costs shall, unless the Court otherwise orders, be allowed in the cases to which Appendix 3 to this Order applies in accordance with the provisions of that Appendix.

[E.r. 32]

### **REVIEW**

#### **Application to Taxing Master for review**

35.—(1) Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by the Taxing Master, or with the amount allowed by the Taxing Master in respect of any item, may apply to the Taxing Master to review his decision in respect of that item.

(2) An application under this rule for review of the Taxing Master's decision may be made at any time within 14 days after that decision.

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Provided that no application under this rule for review of a decision in respect of any item, may be made after the signing of the Taxing Master's certificate dealing finally with that item.

(3) Every applicant for review under this rule must at the time of making his application deliver to the Taxing Master objections in writing specifying by a list the items or parts of items the allowance or disallowance of which or the amount allowed in respect of which, is objected to and stating concisely the nature and grounds of the objection in each case, and must deliver a copy of the objections to each other party (if any) who attend on the taxation of those items or to whom the Taxing Master directs that a copy of the objections shall be delivered

(4) Any party to whom a copy of the objections is delivered under this rule may, within 14 days after delivery of the copy to him or such shorter period as may be fixed by the Taxing Master, deliver to the Taxing Master answers in writing to the objections stating concisely the grounds on which he will oppose the objections, and must at the same time deliver a copy of the answers to the party applying for the review and to each other party (if any) to whom a copy of the objections has been delivered or to whom the Taxing Master directs that a copy of the answers shall be delivered.

(5) An application under this rule for review of the Taxing Master's decision in respect of any item shall not prejudice the power of the Taxing Master under rule 16 to issue an interim certificate in respect of items his decision as to which is not objected to.

[E.r. 33]

### **Review by Taxing Master**

36.—(1) On reviewing any decision in respect of any item, the Taxing Master may receive further evidence and may exercise all the powers which he might exercise on an original taxation in respect of that item, including the power to award costs of and incidental to the proceedings before him; and any costs awarded by him to any party may be taxed by him and may be added to or deducted from any other sum payable to or by that party in respect of costs.

(2) On a hearing of a review under rule 35 a party to whom a copy of objections was delivered under paragraph (4) of that rule shall be entitled to be heard in respect of any item to which the objections relate notwithstanding that he did not deliver written answers to the objections under that paragraph.

(3) The Taxing Master who has reviewed a decision in respect of any item shall issue his certificate accordingly and, if requested to do so by any party to the proceedings before him, shall state in his certificate or otherwise in writing by reference to the objections to that decision the reasons for his decision on the review, and any special facts or circumstances relevant to it.

A request under this paragraph must be made within 14 days after the review.

[E.r. 34]

### **Review of Taxing Master's certificate by a judge**

37.—(1) Any party who is dissatisfied with the decision of the Taxing Master to allow or disallow any item in whole or in part on review under rule 36, or with the amount allowed in respect of any item by the Taxing Master on any such review, may apply to a judge for an order to review the taxation as to that item or part of an item if, but only if, one of the parties to the proceedings before the Taxing Master requested him in accordance with rule 36(3) to state the reasons for his decision in respect of that item or part on the review.

(2) An application under this rule for review of the Taxing Master's decision in respect of any item may be made at any time within 14 days after the Taxing Master's certificate in respect of that item is signed, or such longer time as the Taxing Master at the time when he signs the certificate, or the Court at any time, may allow.



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(3) An application under this rule shall be made by summons and shall, except where the judge thinks fit to adjourn into court, be heard in chambers.

(4) Unless the judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on the review by the Taxing Master but, save as aforesaid, on the hearing of any such application the judge may exercise all such powers and discretion as are vested in the Taxing Master in relation to the subject matter of the application.

(5) On an application under this rule the judge may make such order as the circumstances require, and in particular may order the Taxing Master's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the Taxing Master for taxation.

(6) In this rule “judge” means a judge in person.

[E.r. 35]

## APPENDIX 1

### REQUISITE DOCUMENT FOR PURPOSES OF RULE 20

1. Where a party is entitled to require any costs to be taxed by virtue of a judgment or order given or made in proceedings in the Supreme Court or by virtue of a direction of the Court given under these Rules, the requisite document for the purposes of rule 20 is the judgment, order or direction, as the case may be.

2. Where a party is entitled by virtue of rule 10 to require any costs to be taxed, the requisite document for the purposes of rule 20 is—

- (a) where he is so entitled by virtue of rule 10(1), the notice given to him under Order 21, rule 2;
- (b) where he is so entitled by virtue of rule 10(2) or (3), a certified copy of the notice given by him under Order 22, rule 3.

3. Where a party is entitled to require taxation by the Taxing Master of the costs directed by an award made on an arbitration under any statutory provision or pursuant to an arbitration agreement to be paid and no order of the Court for the enforcement of the award has been made, the requisite document for the purposes of rule 20 is the award.

4. Where a party is entitled to require taxation by the Taxing Master of any costs directed to be taxed or paid by an order, award or other determination of a tribunal or other body constituted by or under any statutory provision, the requisite document for the purposes of rule 20 is the order, award or other determination, as the case may be.

5. Where a party is entitled by virtue of rule 3(13) to require any costs to be taxed, the requisite document for the purposes of rule 20 is a copy of the notice given by him pursuant to rule 3(13).

[E. App. 1]

## APPENDIX 2

### SCALE OF COSTS

#### PART 1

#### PREPARATION OF DOCUMENTS

*Note.* The following items shall not apply to any cause or matter to which Part 2 or 5 applies.

#### *Item*

1. *Institution of proceedings:*

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- (a) Preparing, issuing, filing and service of writ of summons, including statement of claim indorsed thereon, originating summons, notice of originating motion, or third party notice ... .. £4-£14
- (b) Preparing, presenting, and issuing any petition, case or special case stated Discretionary
- (c) Preparing and issuing concurrent writ of summons or originating summons, renewing writ of summons or originating summons ... .. £3

2. *Interlocutory proceedings and proceedings in chambers:*

Preparing, issuing, filing and service of any summons or application or notice of motion (other than an originating motion), notice of interlocutory appeal ... .. £2-£14

3. *Other Documents:* Preparing (including where necessary filing, serving or delivering) any document not otherwise provided for, including—

- (a) any documents to renew a writ of summons or originating summons, to amend any document or to obtain an order for substituted service or giving leave to serve out of the jurisdiction,
- (b) statement of claim, if not indorsed on writ, and other pleadings, answer to petition, particulars of pleadings, requests for such particulars, interrogatories, affidavits and lists of documents, notice to produce, admit or inspect documents and amendments to any documents,
- (c) any affidavit or other document for use in connection with items 1 or 2,
- (d) any brief to counsel or case to counsel to advise in writing or in conference,
- (e) any instructions to counsel to settle any document except where an allowance for the preparation of that document is recoverable under items 1, 2 or 3  
 for first 5 A4 pages £3 per page (or proportionately)  
 for each A4 page thereafter £1 (or proportionately)

*Note:* Items 1, 2 and 3 include engrossing and one copy for service. Any additional copies required are to be charged under item 4. Item 3(a) and (e) include the copy for counsel.

4. *Copy documents:*

- (a) Typed top copy

A5 (quarto)	20p per page
A4 (foolscap)	35p per page
A3 (brief)	50p per page
(b) Photographic, printed and carbon copies	
A5 and A4	15p per page
A3	30p per page

PART 2

BLOCK ALLOWANCE

5. In any action for damages for personal injuries, and, subject to Part 5, in any other cause or matter as the party entitled to receive the costs may elect, a block allowance shall be made in place of the items prescribed in Part 1 unless, in any such case, the Taxing Master otherwise directs; and the allowance shall be ... .. £20—£100

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### PART 3

#### ATTENDANCES

6. *Interlocutory attendances:* Attending the hearing of any summons or other application at court or in chambers or elsewhere, attending to settle draft minutes or any order in the Chancery Division; attending to draw up and enter any order or judgment, attending to obtain appointment to examine witnesses and attending on such appointment ... .. £2—£17

7. *Counsel:* Attending counsel in consultation or conference including attending to appoint the same

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for each half hour or part thereof	£4
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8. *Trial or hearing:* Attending the trial or hearing of a cause or matter, or an appeal from an interlocutory or final order or judgment, or to hear a deferred judgment

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per day or part of a day	£5-£21
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9. *Accountant General:* Attendance at Courts Funds Office or at the Bank of Ireland for any necessary purpose, including, the preparation of certificate ... .. Discretionary

### PART 4

#### PREPARATION FOR TRIAL

10. Instructions for trial or hearing of any cause or matter, whatever the mode of trial or hearing, or for the hearing of any appeal

Discretionary

*Note to item 10*

This item is intended to cover:—

- (a) the doing of any work not otherwise provided for and which was properly done in preparing for the trial, hearing or appeal, or before a settlement of the matters in dispute, including—
  - (i) *the client:* taking instructions to sue, defend, counterclaim, appeal or oppose etc.; attending upon and corresponding with client;
  - (ii) *Witnesses:* interviewing and corresponding with witnesses and potential witnesses, taking and preparing proofs of evidence and, where appropriate, arranging attendance at Court, including issue of subpoena;
  - (iii) *Expert evidence:* obtaining and considering reports or advice from experts and plans, photographs and models; where appropriate arranging their attendance at Court, including issue of subpoena;
  - (iv) *Inspections:* inspecting any property or place material to the proceedings;
  - (v) *Searches and Inquiries:* making searches in the Public Record Office and elsewhere for relevant documents; searches in the Companies Registry and similar matters;
  - (vi) *Special damages:* obtaining details of special damages and making or obtaining any relevant calculations;
  - (vii) *Other parties:* attending upon and corresponding with other parties or their solicitors;

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- (viii) *Discovery*: Perusing, considering or collating documents for affidavit or list of documents; attending to inspect or produce for inspection any documents required to be produced or inspected by Order of the court or by virtue of Order 24;
- (ix) *Documents*: Consideration of pleadings, affidavits, cases and instructions to and advice from counsel, any law involved and any other relevant documents, including collating;
- (x) *Negotiations*: Work done in connection with negotiations with a view to settlement;
- (xi) *Agency*: Correspondence with and attendance upon or other work done by agents;
- (xii) *Interest*: Where relevant the calculation of interest on damages;
- (xiii) *Notices*: Preparation and service of miscellaneous notices, including notices to witnesses to attend court.

(b) The general care and conduct of the proceedings.

*Note*: The sums sought under each sub-paragraph (i) to (xiii) of paragraph (a) should be shown separately against each item followed by the total of all items under paragraph (a); the sum charged under paragraph (b) should be shown separately; and the total of the items under (a) and (b) should then follow.

*PART 5  
ADMIRALTY*

11.

(a) Obtaining arrest or release of property	£9
(b) Entry or withdrawal of any caveat	£2
(c) Obtaining bail or guarantee or undertaking in lieu of bail	£5
(d) Giving bail	
(i) one surety	£10
(ii) two sureties	£11

*Note to item 11(d)*

This item includes drawing the bail bond, affidavits and other documents required in connection with the giving of bail and any attendances required to procure the signing of the bond, the swearing of any such affidavit and the service of any such document.

(e) Giving guarantee or undertaking in lieu of £6 bail	
--	--

*Note to item 11(e)*

This item includes preparing the guarantee or undertaking and any attendances required to procure the signing and stamping thereof.

(f) Issuing commission of appraisalment or appraisalment and sale	£5
(g) Lodging a preliminary act	Discretionary

*Note to items 11(a) to 11(g)*

These items include where applicable the preparation, filing, lodging, service and perusal of documents; the swearing of any affidavit; the obtaining or giving of consent and the provision of any undertaking in writing to the Marshal

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(h) Attendance at the Marshal's Office not £2 otherwise provided for

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## PART 6

### TAXATION OF COSTS

(a) (a) *Taxation*

Obtaining the reference, preparing bill of costs and copies and attending to lodge; attending taxation; vouching and completing bill; paying taxing fee and lodging for certificate or order

Discretionary

(b) *Review*

Preparing and delivering objections to decision on taxation; or answers to objections, including copies for service and lodging, considering opponent's answers or objections, as the case may be, attending hearing of review ... .. Discretionary

[E. App. 2]

### REGULATIONS

#### Discretionary costs

1.—(1) Where in the foregoing provisions of this Appendix there is entered against any item either an upper and a lower sum of money or the word “Discretionary”, the amount of costs to be allowed in respect of that item shall (subject to rule 27 and any order of the Court fixing the costs to be allowed) be in the discretion of the Taxing Master, within the limits of the sums so entered, if any.

(2) In exercising his discretion under this paragraph or under rule 34(2) in relation to any item, the Taxing Master shall have regard to all relevant circumstances, and in particular to—

- (a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
- (b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel;
- (c) the number and importance of the documents (however brief) prepared or perused;
- (d) the place and circumstances in which the business involved is transacted;
- (e) the importance of the cause or matter to the client;
- (f) where money or property is involved, its amount or value;
- (g) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

[E. App. 2 Part X para. 1]

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### **Fees to counsel**

2.—(1) Except in the case of taxations under the Legal Aid and Advice Act (Northern Ireland) 1965, no fee to counsel shall be allowed unless before the Taxing Master issues his certificate a receipt for the fees signed by counsel is produced to him.

(2) No retaining fee to counsel shall be allowed on any taxation of costs in relation to which rule 27(2) has effect.

(3) The costs in respect of one counsel attending before a judge in chambers may be allowed, unless the judge otherwise directs.

(4) No costs shall be allowed in respect of more than one counsel attending before a judge in chambers or in respect of counsel attending before a master, unless the judge or the master, as the case may be, has certified such attendance as being proper in the circumstances of the case.

(5) A refresher fee, the amount of which shall be in the discretion of the Taxing Master, shall be allowed to counsel, either for each period of five hours (or part thereof), after the first, during which a trial or hearing is proceeding or, at the discretion of the Taxing Master, in respect of any day, after the first day, on which the attendance of counsel at the place of trial is necessary.

[E. App. 2 Part X para. 2]

### **Consultations**

3. On a taxation pursuant to rule 27(2) the costs of a consultation with counsel prior to the settlement of the statement of claim or defence, as the case may be, may be allowed in cases of difficulty or importance.

### **Items to be authorised, certified, etc.**

4.—(1) In an action arising out of an accident on land due to a collision or apprehended collision, the costs of preparing a plan (other than a sketch plan) of the place where the accident happened shall not be allowed unless the Taxing Master is satisfied that it was reasonable to prepare the plan for use at the trial.

(2) The costs of calling an expert witness with regard to any question as to which a scientific adviser is appointed under Order 104, rule 11, shall not be allowed on a taxation of costs in relation to which rule 27(2) or (3) has effect unless the Court at the trial has certified that the calling of the witness was reasonable.

(3) If any action or counterclaim for the infringement of a patent or any petition for revocation of a patent under section 32 of the Patents Act 1949 or any counterclaim for the revocation of a patent under section 61 of that Act, proceeds to trial, no costs shall be allowed to the parties serving any particulars of breaches or particulars of objection in respect of any issues raised in those particulars and relating to that patent except in so far as those issues or particulars have been certified by the Court to have been proven or to have been reasonable and proper.

[E. App. 2 Part X para. 4]

### **Certificate of Court to be taken into account**

5. Where on any hearing in chambers in the Chancery Division the Court certifies that the speedy and satisfactory disposal of the proceedings required and received from the solicitor engaged in them exceptional skill and labour in the preparation for the hearing, the Taxing Master in taxing the costs to be allowed for instructions in relation to the summons or application shall take the certificate into account.

[E. App. 2 Part X para. 5]

### **Copies of documents**

6.—(1) There shall be allowed for printing copies of any document the amount properly paid to the printer; and where any part of a document is properly printed in a foreign language or as a facsimile or in any unusual or special manner, or where any alteration becomes necessary after the first proof of the document, there shall be allowed such an amount as the Taxing Master thinks reasonable, such amount to include any attendances on the printer.

(2) The solicitor for a party entitled to take printed copies of any documents shall be allowed the amount he pays for such number of copies as he necessarily or properly takes.

(3) The allowances under this Appendix for preparing any writ, pleading, summons, affidavit or other document shall be taken to include an allowance—

- (a) for preparing any necessary copies up to four in number but in reckoning such number no account shall be taken of brief copies or copies for the client;
- (b) for drawing, engrossing and completing and attendance on the client or other person to sign, execute or deliver;
- (c) for attending on counsel in connection therewith or on any officer of the Court to issue, file, lodge or bespeak.

[E. App. 2 Part X para. 7]

### **Allowances to expert witnesses**

7. The allowances which may be made to expert witnesses shall include—

- (a) a fee for attending at and time spent travelling to and from Court;
- (b) travelling and subsistence expenses necessarily incurred;
- (c) a reasonable fee for qualifying to give evidence;
- (d) a reasonable fee for attending at one pre-trial consultation held after the close of pleadings and prior to the day of the hearing or trial provided—
  - (i) that the case is one which having regard to the amount recovered or paid in settlement, or the relief awarded, could not have been brought in the county court or a judge has certified that it was fit to be tried in the High Court, and
  - (ii) that the senior or only counsel has certified that such attendance was necessary.

### **Uncompleted work**

8. Where for any reason all the work contemplated by any of the items in this Appendix has not been completed an appropriate proportionate allowance shall be made.

## **APPENDIX 3**

### **FIXED COSTS**

#### *PART 1*

#### *COSTS ON RECOVERY OF A LIQUIDATED SUM WITHOUT TRIAL*

1. The scale of costs following paragraph 2 of this Part of this Appendix shall apply in relation to the following cases if the writ of summons therein was issued on or after 1st January 1981 and was indorsed in accordance with Order 6, rule 2(1)(b), with a claim for a debt or liquidated demand only of £350 upwards, that is to say—

- (a) cases in which the defendant pays the amount claimed or a sum of not less than £350 within the time and in the manner required by the indorsement of the writ;

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- (b) cases in which the plaintiff obtains judgment in default of appearance under Order 13, rule 1, or under that rule by virtue of Order 83, rule 4, or judgment in default of defence under Order 19, rule 2, being in any case judgment for a sum of £350 or upwards;
  - (c) cases in which the plaintiff obtains judgment under Order 14, for a sum of £350 or upwards; either unconditionally or unless that sum is paid into court or to the plaintiff's solicitors.
2. There shall be added to the basic costs set out in the said scale—
- (i) if the amount recovered is less than £1,200, the fee payable on an ordinary civil bill process in the county court for that amount, and
  - (ii) in any other case the fee paid on the issue of the writ and, where applicable, on the final judgment.

**SCALE OF COSTS**

**A. BASIC COSTS**

	Amount to be allowed in cases under the following sub-paragraphs of paragraph 1 of this Appendix		
	(a) £ p	(b) £ p	(c) £ p
If the amount recovered is :—			
not less than £350 but less than £1,000			
(i) where the writ was served by post	9.25	12.25	15.25
(ii) where the writ was served on the defendant personally	10.00	13.00	16.00
not less than £1,000 but less than £1,200			
(i) where the writ was served by post	13.40	18.40	24.40
(ii) where the writ was served on the defendant personally	15.00	20.00	26.00
not less than £1,200	17.25	27.50	40.85

**B. ADDITIONAL COSTS**

	Amount to be allowed where the amount recovered is—	
	(i) not less than £350 but less than £1,200 £ p	(ii) not less than £1,200 £ p
(1) Where there is more than one defendant, in respect of each additional defendant served	1.00	2.05
(2) Where substituted service is ordered and effected, in respect of each defendant served	3.50	7.75



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	Amount to be allowed where the amount recovered is—	
	(i) not less than £350 but less than £1,200 £ p	(ii) not less than £1,200 £ p
(3) Where the plaintiff's solicitor has no place of business within 5 miles of the Royal Courts of Justice, or where he has a place of business within that area but any defendant is served outside that area	1·00	2·05
(4) Where service outside the jurisdiction is ordered and effected, in the case of service—		
(a) in England and Wales, Scotland, the Isle of Man or the Channel Islands	8·00	11·15
(b) in any other place out of the jurisdiction	12·00	17·20
(5) In the case of judgment in default of defence or judgment under Order 14, where notice of appearance is not given on the day on which appearance is entered, and the plaintiff makes an affidavit of service for the purpose of a judgment in default of appearance (the allowance to include the service)	1·25	3·40
(6) In the case of judgment under Order 14 where an affidavit of service of the summons is required	1·25	3·40
(7) In the case of judgment under Order 14 for each adjournment of the summons	1·25	2·05
		Costs to be allowed
£ p		
(8) Where the amount recovered is not less than £1,200 and there is no available solicitor carrying on business within 2 miles of the place where the defendant is served, a mileage allowance in respect of each mile after the first two miles between that place and the nearest place of business of an available solicitor		0·15

*PART 2*

*COSTS ON JUDGMENT WITHOUT TRIAL FOR POSSESSION OF LAND*

1.—(1) Where the writ of summons is indorsed with a claim for the possession of land and the plaintiff obtains judgment—

- (a) under Order 13, rule 4 or 5, in default of appearance, or
- (b) under Order 19, rule 5 or 6, in default of defence, or
- (c) under Order 14,

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for possession of the land and costs, then, subject to sub-paragraph (2), there shall be allowed the costs prescribed by paragraph 2 of this Part of this Appendix.

(2) Where the plaintiff is also entitled under the judgment to damages to be assessed, or where the plaintiff claims any relief of the nature specified in Order 88, rule 1, this Part of this Appendix shall not apply.

2. The costs to be allowed under this Part of this Appendix shall be the costs which would be allowed under Part I (together with the fee paid on the writ) if judgment had been obtained in the same circumstances, that is to say, in default of appearance or defence or under Order 14, but the writ has been indorsed with a claim for a debt or liquidated demand only of £350 or upwards and judgment for not less than £350 but less than £1,200 had been obtained.

PART 3

MISCELLANEOUS

1. Where a plaintiff or defendant signs judgment for costs under rule 10, there shall be allowed—

Costs of the judgment	£2·15
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2. Where a certificate of a judgment or decree is registered in the High Court in the Register for English Judgments or the Register for Scottish Judgments under the Judgments Extension Act 1868, within 12 months of the date of the judgment and without an order, there shall be allowed—

Costs of registration	£9·45
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3. Where proceedings are taken pursuant to Order 111, there shall be marked on the judgment summons in respect of the cost thereof ... .. £5·00

[E. App. 3]

APPENDIX 4

NON-CONTENTIOUS PROBATE COSTS

1. For work done in respect of business to which the provisions of this Appendix apply a solicitor shall be entitled to charge and be paid such sums as may be fair and reasonable having regard to, all the circumstances of the case and in particular to—

- (1) the complexity of the matter or the difficulty or novelty of the questions raised;
- (2) the skill, labour; specialised knowledge and responsibility involved on the, part, of the solicitor;
- (3) the number and importance of the documents prepared or perused, without regard to length;
- (4) the place where and circumstances in which the business or any part thereof is transacted;
- (5) the time expended by the solicitor;
- (6) the nature and value of the property involved;
- (7) the importance of the matter to the client.

Provided that—

- (a) without prejudice to the provisions of the Solicitors (Northern Ireland) Order 1976 (which relate to the taxation of costs), the client may require the solicitor to obtain a certificate from the Incorporated Law Society of Northern Ireland (hereinafter called “the Society”) certifying that the sum charged is fair and reasonable or, if it is not, what is a fair and

reasonable sum, and the sum so certified (if less than that charged) shall, in the absence of taxation under the said Act, be the sum payable;

- (b) before the solicitor brings proceedings to recover costs in respect of business to which the provisions of this Appendix apply, he must, unless the costs have been taxed under the Solicitors (Northern Ireland) Order 1976, have drawn the attention of the client in writing—
  - (i) to his right under paragraph (a) of the proviso to require the solicitor to obtain a certificate from the Society, and
  - (ii) to the provisions of the Solicitors (Northern Ireland) Order 1976;
- (c) the client shall not be entitled to require the solicitor to obtain a certificate from the Society under paragraph (a) of this proviso after the bill has been taxed under the Solicitors (Northern Ireland) Order 1976, or has been paid;
- (d) on any taxation of a bill in respect of business to which the provisions of this Appendix apply it shall be the duty of the solicitor to satisfy the Taxing Master as to the fairness and reasonableness of his charge; and
- (e) if the Taxing Master allows less than one half of the amount charged, he shall bring the facts of the case to the attention of the Society.

2. The provisions of this Appendix apply to all non-contentious or common form probate business for which instructions are accepted on or after 1st January 1981.

#### APPENDIX 5

FORM 1 FORM OF APPLICATION FOR TAXATION OF A BILL OF COSTS ALREADY DELIVERED



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(rule 12(4))

\_\_\_\_\_  
**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
THE TAXING OFFICE**  
\_\_\_\_\_

*In contentious matters*

**IN THE MATTER of the SOLICITORS (IRELAND) ACT 1849  
AND IN THE MATTER of A.B., a solicitor of the Supreme Court**

**C.D.,** Applicant;  
**v.**  
**E.F.,** Respondent.

*In non-contentious matters*

**IN THE MATTER of the SOLICITORS (NORTHERN IRELAND) ORDER 1976**

**A.B.,** Applicant;  
**v.**  
**C.D.,** Respondent.

\_\_\_\_\_  
**TAKE NOTICE** that the above-named  
the applicant, will apply to the Master on the \_\_\_\_\_ day of  
19 \_\_\_\_\_ at the hour of \_\_\_\_\_ a.m./p.m. for an order pursuant to Order 62,  
rule 12—

1. For the delivery of a bill of costs and for the Taxation thereof,
2. The application is grounded on the affidavit of

Dated \_\_\_\_\_ 19 \_\_\_\_\_ .

.....  
Applicant or Solicitor for Applicant.

**GENERAL AND ADMINISTRATIVE PROVISIONS**

**ORDER 63**

[No Order made]

**ORDER 64**

**SITTINGS, VACATIONS AND OFFICE HOURS**

**Sittings of Supreme Court**

1. The sittings of the Court of Appeal and of the High Court shall be three in every year, that is to say—

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- (a) the Michaelmas sittings which shall begin on 5th September and end on 21st December, subject to a recess from the Monday which falls on or nearest to 31st October to the following Friday, both days included;
- (b) the Hilary sittings which shall begin on 6th January and end on the Friday before Good Friday; and
- (c) the Trinity sittings which shall begin on the second Monday after Easter Sunday and end on 30th June.

[E.r. 1]

### **Vacation Judge**

2.—(1) A judge of the High Court or Court of Appeal, selected each year in accordance with this rule, shall be available during every vacation to act as Vacation Judge.

(2) The judge selected shall act as Vacation Judge for one year beginning with the 1st day of July next following the date of his selection.

(3) Unless the judges otherwise arrange between themselves, the Vacation Judge shall be selected in rotation, commencing with the judge last appointed who has not already served as Vacation Judge and ending with the judge who has most recently so served.

(4) Any other judge of the High Court or Court of Appeal may sit in vacation for the Vacation Judge.

[E.r. 2]

### **Sittings and powers of Vacation Judge**

3.—(1) The Vacation Judge shall sit in vacation as occasion may require.

(2) No order made by the Vacation Judge or a judge acting as such shall (except on consent) be reversed or varied except by the judge who made the order, a court of two or more judges or the Court of Appeal.

[E.r. 3]

### **Hearing of applications, etc. in vacation**

4.—(1) All such applications as require to be immediately or promptly heard shall be heard in vacation by the Vacation Judge, a court of two or more judges or the Court of Appeal, as may be necessary.

(2) Any party to a cause or matter may at any time apply by summons to a judge for an order that the cause or matter shall be tried or heard during vacation, and if the judge is satisfied that there is urgent need for the trial or hearing to take place in vacation he may make an order accordingly and fix a date for the trial or hearing.

[E.r. 4]

### **Supreme Court Offices days on which open and office hours**

5.—(1) The offices of the Supreme Court shall be open on every day of the year except—

- (a) Saturdays and Sundays,
- (b) Good Friday and the day after Easter Monday,
- (c) Christmas Eve or—
  - (i) if that day is a Saturday, then 23rd December,

- (ii) if that day is a Sunday or Tuesday, then 27th December,
  - (d) Christmas Day, and, if that day is a Friday or Saturday, then 28th December,
  - (e) Bank Holidays in Northern Ireland under the Banking and Financial Dealings Act 1971(65), and
  - (f) such other days as the Lord Chancellor, with the concurrence of the Lord Chief Justice, may direct.
- (2) The hours during which any office of the Supreme Court shall be open to the public shall be such as the Lord Chancellor, with the concurrence of the Lord Chief Justice, may from time to time direct.

[E.r. 7]

## ORDER 65

### SERVICE OF DOCUMENTS

#### **When personal service required**

1.—(1) Any document which by virtue of these Rules is required to be served on any person need not be served, personally unless the document is one which by an express provision of these Rules or by order of the Court is required to be so served.

(2) Paragraph (1) shall not affect the power of the Court under any provision of these Rules to dispense with the requirement for personal service.

[E.r. 1]

#### **Personal service : how effected**

2. Personal service of a document is effected by leaving a copy of the document with the person to be served.

[E.r. 2]

#### **Service on body corporate**

3.—(1) Personal service of a document on a body corporate may, in cases for which provision is not otherwise made by any statutory provision, be effected by serving it in accordance with rule 2 on the mayor, chairman or president of the body, or the town clerk, clerk, secretary, treasurer or other similar officer thereof.

(2) Where a writ is served on a body corporate in accordance with Order 10, rule 1(2), that rule shall have effect as if for the reference to the usual or last known address of the defendant there were substituted a reference to the registered or principal office of the body corporate.

[E.r. 3]

#### **Substituted service**

4.—(1) If, in the case of any document which by virtue of any provision of these Rules is required to be served personally or is a document to which Order 10, rule 1 applies, it appears to the Court that it is impracticable for any reason to serve that document in the manner prescribed, the Court may make an order for substituted service of that document.

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(2) An application for an order for substituted service may be made by an affidavit stating the facts on which the application is founded.

(3) Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.

[E.r. 4]

### **Ordinary service : how effected**

5.—(1) Service of any document, not being a document which by virtue of any provision of these Rules is required to be served personally, of a document to which Order 10, rule 1, applies may be effected—

- (a) by leaving the document at the proper address of the person to be served, or
- (b) by post, or
- (c) in such other matter as the Court may direct.

(2) For the purposes of this rule, and of section 7 of the Interpretation Act 1978<sup>(66)</sup>, in its application to this rule, the proper address of any person on whom a document is to be served in accordance with this rule shall be the address for service of that person, but if at the time when service is effected that person had no address for service his proper address for the purposes aforesaid shall be—

- (a) in any case, the business address of the solicitor (if any) who is acting for him in the proceedings in connection with which service of the document in question is to be effected, or
- (b) in the case of an individual, his usual or last known address, or
- (c) in the case of individuals who are suing or being sued in the name of a firm, the principal or last known place of business of the firm within the jurisdiction, or
- (d) in the case of a body corporate, the registered or principal office of the body.

(3) Nothing in this rule shall be taken as prohibiting the personal service of any document or as affecting any statutory provision which provides for the manner in which documents may be served on bodies corporate.

[E.r. 5]

### **Service on Minister, etc., in proceedings which are not by or against the Crown**

6. Where for the purpose of or in connection with any proceedings in the Supreme Court, not being civil proceedings by or against the Crown within the meaning of Part II of the Crown Proceedings Act 1947<sup>(67)</sup>, any document is required by any statutory provision or these Rules to be served on the Minister or Head of a government department which is an authorised department for the purposes of that Act, or on such a department or on the Attorney General, section 18 of the said Act of 1947 and Order 77, rule 4, shall apply in relation to the service of the document as they apply in relation to the service of documents required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown.

[E.r. 6]

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<sup>(66)</sup> 1978 c. 30  
<sup>(67)</sup> 1947 c. 44



### **Effect of service after certain hours**

7. Any document (other than a writ of summons or other originating process) service of which is effected under rule 2 or under rule 5(1)(a) after twelve noon on a Saturday or after four in the afternoon on any other weekday shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the Monday following that Saturday or on the day following that other weekday, as the case may be.

[E.r. 7]

### **Affidavit of service**

8. Except as provided in Order 10, rule 1(3)(b) and Order 81, rule 3(2)(b) an affidavit of service of any document must state by whom the document was served, the day of the week and date on which it was served, where it was served and how.

[E.r. 8]

### **No service required in certain cases**

9. Where by virtue of these Rules any document is required to be served on any person but is not required to be served personally or in accordance with Order 10, Rule 1(2) and at the time when service is to be effected that person is in default as to entry of appearance or has no address for service the document need not be served on that person unless the Court otherwise directs or any of these Rules otherwise provides.

[E.r. 9]

## **ORDER 66**

### **PAPER, PRINTING, NOTICES, COPIES AND INSPECTION OF DOCUMENTS**

#### **Quality and size of paper**

1.—(1) Unless the nature of the document renders it impracticable, every document prepared by a party for use in the Supreme Court must be on paper of durable quality, approximately 297mm long, by 210mm wide or A4ISO having a margin, not less than 38mm wide, to be left blank on the left side of the face of the paper and on the right side of the reverse.

(2) In these Rules the expressions “A3”, “A4” and “A5” followed by the letters “ISO” mean respectively the size of paper so referred to in the specifications of the International Standards Organisation.

[E.r. 1]

#### **Regulations as to printing, etc.**

2.—(1) Except where these Rules otherwise provide, every document prepared by a party for use in the Supreme Court must be produced by one of the following means, that is to say, printing, writing (which must be clear and legible) and typewriting otherwise than by means of a carbon, and may be produced partly by one of those means and partly by another or others of them.

(2) For the purposes of these rules a document shall be deemed to be printed if it is produced by type lithography or stencil duplicating.

(3) Any type used in producing a document for use as aforesaid must be such as to give a clear and legible impression and must be not smaller than 11point type for printing or elite type for type lithography, stencil duplicating or typewriting.

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(4) Any document produced by a photographic or similar process giving a positive and permanent representation free from blemishes shall, to the extent that it contains a facsimile of any printed, written or typewritten matter, be treated for the purposes of these rules as if it were printed, written or typewritten, as the case may be.

(5) Any notice required by these Rules may not be given orally except with the leave of the Court.

[E.r. 2]

### **Copies of documents for other party**

3.—(1) Where a document prepared by a party for use in the Supreme Court is printed the party by whom it was prepared must, on receiving a written request from any other party entitled to a copy of that document and on payment of the proper charges, supply him with such number of copies thereof, not exceeding ten, as may be specified in the request.

(2) Where a document prepared by a party for use in the Supreme Court is written or typewritten, the party by whom it was prepared must supply any other party entitled to a copy of it, not being a party on whom it has been served, with one copy of it and, where the document in question is an affidavit, of any document exhibited to it.

The copy must be ready for delivery within 48 hours after a written request for it, together with an undertaking to pay the proper charges, is received and must be supplied thereafter on payment of those charges.

[E.r. 3]

### **Requirements as to copies**

4.—(1) Before a copy of a document is supplied to a party under these Rules it must be indorsed with the name and address of the party or solicitor by whom it was supplied.

(2) The party by whom a copy is supplied under rule 3, or, if he sues or appears by a solicitor, his solicitor, shall be answerable for the copy being a true copy of the original or of an office copy, as the case may be.

[E.r. 4]

### **Right to inspect, etc. certain documents filed in Court Offices**

5.—(1) Any person shall, on payment of the prescribed fee, be entitled during office hours to search for, inspect and take a copy of any of the following documents filed in the Central Office, namely—

- (a) the copy of any writ of summons or other originating process.
- (b) any judgment or order given or made in court or the copy of any such judgment or order, and
- (c) with the leave of the Court, which may be granted on an application made ex parte, any other document.

(2) Paragraph (1) shall apply to the judgments and orders filed in the Chancery Office or the Bankruptcy and Companies Office, and to the Chancery judgments and orders kept in the Central Office, as it applies to judgments and orders filed in the Central Office.

(3) Nothing in the foregoing provisions shall be taken as preventing any party to a cause or matter searching for, inspecting and taking or bespeaking a copy of any affidavit or other document filed in that cause or matter or filed before the commencement of that cause or matter but made with a view to its commencement.

[E.O. 63 r. 4]

(4) For the purpose of this rule, a decree made in chambers in a limitation action as defined in Order 75, rule 1(2), shall be deemed to have been made in Court.

[E.O. 75 r. 46(4)]

## ORDER 67

### CHANGE OF SOLICITOR

#### **Notice of change of solicitor**

1.—(1) A party to any cause or matter who sues or defends by a solicitor may change his solicitor without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are served in accordance with this rule, the former solicitor shall, subject to rules 4 and 5, be considered the solicitor of the party until the final conclusion of the cause or matter, whether in the High Court or the Court of Appeal.

(2) Notice of a change of solicitor must be filed in the appropriate office.

(3) The party giving the notice must serve on every other party to the cause or matter (not being a party in default as to entry of appearance) and on the former solicitor a copy of the notice indorsed with a memorandum stating that the notice has been duly filed in the appropriate office (naming it).

(4) The party giving the notice may perform the duties prescribed by this rule in person or by his new solicitor.

[E.r. 1]

#### **Notice of appointment of solicitor**

2. Where a party, after having sued or defended in person, appoints a solicitor to act in the cause or matter on his behalf, the change may be made without an order for that purpose and rule 1(2), (3) and (4) shall, with the necessary modifications, apply in relation to a notice of appointment of a solicitor as they apply in relation to a notice of change of solicitor.

[E.r. 3]

#### **Notice of intention to act in person**

3. Where a party, after having sued or defended by a solicitor, intends and is entitled to act in person, the change may be made without an order for that purpose and rule 1 shall, with the necessary modifications, apply in relation to a notice of intention to act in person as it applies in relation to a notice of change of solicitor except that the notice of intention to act in person must contain an address for service of the party giving it.

[E.r. 4]

#### **Removal of solicitor from record at instance of another party**

4.—(1) Where—

(a) a solicitor who has acted for a party in a cause or matter has died or become bankrupt or cannot be found or has failed to take out a practising certificate or has been struck off the roll of solicitors or has been suspended from practising or has for any other reason ceased to practise, and

(b) the party has not given notice of change of solicitor or notice of intention to act in person in accordance with the foregoing provisions of this Order,

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any other party to the cause or matter may apply to the Court, or if an appeal to the Court of Appeal is pending in the cause or matter; to the Court of Appeal, for an order declaring that the solicitor has ceased to be the solicitor acting for the first-mentioned party in the cause or matter, and the Court or Court of Appeal, as the case may be, may make an order accordingly.

(2) An application for an order under this rule must be made by summons or, in the case of an application to the Court of Appeal, by motion, and the summons or notice of motion must, unless the Court or Court of Appeal, as the case may be, otherwise directs, be served on the party to whose solicitor the application relates.

The application must be supported by an affidavit stating the grounds of the application.

- (3) Where an order is made under this rule the party on whose application it was made must—
- (a) serve on every other party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order, and
  - (b) procure the order to be entered in the appropriate office, and
  - (c) leave at that office a copy of the order and a certificate signed by him or his solicitor that the order has been duly served as aforesaid.

(4) An order made under this rule shall not affect the rights of the solicitor and the party for whom he acted as between themselves.

[E.r. 5]

#### **Withdrawal of solicitor who has ceased to act for party**

5.—(1) Where a solicitor who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with rule 1, or notice of intention to act in person in accordance with rule 3, the solicitor may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting for the party in the cause or matter, and the Court or Court of Appeal, as the case may be, may make an order accordingly, but unless and until the solicitor—

- (a) serves on every party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order, and
- (b) procures the order to be entered in the appropriate office, and
- (c) leaves at that office a copy of the order and a certificate signed by him that the order has been duly served as aforesaid,

he shall, subject to the foregoing provisions of this Order, be considered the solicitor of the party till the final conclusion of the cause or matter, whether in the High Court or Court of Appeal.

(2) An application for an order under this rule must be made by summons or, in the case of an application to the Court of Appeal, by motion, and the summons or notice of motion must, unless the Court or the Court of Appeal, as the case may be, otherwise directs, be served on the party for whom the solicitor acted.

The application must be supported by an affidavit stating the grounds of the application.

(3) An order made under this rule shall not affect the rights of the solicitor and the party for whom he acted as between themselves.

(4) Notwithstanding anything in paragraph (1), Where the certificate of an assisted person within the meaning of the Legal Aid (General) Regulations (Northern Ireland) 1965(68) is revoked or discharged, the solicitor who acted for the assisted person shall cease to be the solicitor acting in the cause or matter as soon as his retainer is determined under regulation 13(2) of the said Regulations; and if the assisted person whose certificate has been revoked or discharged desires to proceed with,

the cause or matter without legal aid and appoints that solicitor or another solicitor to act on his behalf, the provisions of rule 2 shall apply as if that party had previously sued or defended in person.

[E.r. 6]

**Address for service of party whose solicitor is removed, etc.**

6. Where—

- (a) an order is made under rule 4, or
- (b) an order is made under rule 5, and the applicant for that order has complied with rule 5(1), or
- (c) the certificate of an assisted person within the meaning of the Legal Aid (General) Regulations (Northern Ireland) 1965 is revoked or discharged,

then, unless and until the party to whose solicitor or to whom, as the case may be, the order or certificate relates either appoints another solicitor and complies with rule 2 or, being entitled to act in person, gives notice of his intention so to do and complies with rule 3, his last known address or, where the party is a body corporate, its registered or principal office shall, for the purpose of the service on him of any document not required to be served personally, be deemed to be his address for service.

[E.r. 7]

**ORDER 68**

[No Order made]

**PROVISIONS AS TO FOREIGN PROCEEDINGS**

**ORDER 69**

**SERVICE OF FOREIGN PROCESS**

**Definitions**

1. In this Order—

“Crown Solicitor” means the Crown Solicitor for Northern Ireland.

“Master” means the Master (Queen's Bench and Appeals);

“process” includes a citation;

“Secretary of State” means Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs.

[E.r. 1]

**Service of foreign legal process**

2.—(1) This rule applies in relation to the service of any process required in connection with civil or commercial proceedings pending before a court or other tribunal of a foreign country where a letter of request from such a tribunal requesting service on a person in Northern Ireland or any such process sent with the letter is received by the Secretary of State and is sent by him to the Supreme Court with an intimation that it is desirable that effect should be given to the request.

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(2) In order that service of the process may be effected in accordance with this rule the letter of request must be accompanied by a translation thereof in English, by two copies of the process to be served and by two copies of a translation of the process in English.

(3) Subject to paragraph (4) and to any statutory provision which provides for the manner in which documents may be served on bodies corporate, service of the process shall be effected by leaving a copy of it and of the translation with the person to be served.

Service shall be effected by the process server appointed under rule 5 or his authorised agent.

(4) Where an application in that behalf is made by the Crown Solicitor with the consent of the Treasury, the Court may make an order for substituted service of the process, and, where such an order is made, service of the process shall be effected by taking such steps as the Court may direct to bring the process to the notice of the person to be served.

(5) After service of the process has been effected or (if such be the case) attempts to effect service of it have failed, the process server shall leave with the Master a copy of the process, an affidavit made by the person who served, or attempted to serve, the process stating when, where and how he did or attempted to do so, a copy of that affidavit and a statement of the costs incurred in effecting, or attempting to effect, service.

(6) The Master shall give a certificate—

- (a) identifying the documents annexed thereto, that is to say, the letter of request for service, a copy of the process received with the letter and a copy of the affidavit referred to in paragraph (5);
- (b) certifying that the method of service of the process and the proof of service are such as are required by the rules of the Supreme Court regulating the service of process of that Court in Northern Ireland or, if such be the case, that service of the process could not be effected for the reason specified in the certificate; and
- (c) certifying that the cost of effecting, or attempting to effect, service, as certified by the Master (Taxing Office), is the amount so specified.

(7) The certificate given under paragraph (6) shall be sealed with the seal of the Supreme Court and shall be sent to the Secretary of State.

[E.r. 2]

### **Service of foreign legal process under Civil Procedure Convention**

3.—(1) This rule applies in relation to the service of any process required in connection with civil or commercial proceedings pending before a court or other tribunal of a foreign country, being a country with which there subsists a Civil Procedure Convention providing for service in Northern Ireland of process of the tribunals of that country, where a letter of request from a consular or other authority of that country requesting service on a person in Northern Ireland of any such process sent with the letter is received by the Master.

(2) In order that service of the process may be effected in accordance with this rule the letter of request must be accompanied by a copy of a translation of the process to be served in English.

(3) Subject to any statutory provision which provides for the manner in which documents may be served on bodies corporate and to any special provisions of the relevant Civil Procedure Convention, service of the process shall be effected by leaving the original process or a copy of it, as indicated in the letter of request, and a copy of the translation with the person to be served.

Service shall be effected by the process server appointed under rule 5 or his authorised agent.

(4) After service of the process has been effected or (if such be the case) attempts to effect service of it have failed, the process server shall leave with the Master an affidavit made by the person who

served, or attempted to serve, the process stating when, where and how he did or attempted to do so, and a statement of the costs incurred in effecting, or attempting to effect, service.

- (5) The Master shall give a certificate certifying—
- (a) that the process or a copy thereof, as the case may be, was served on the person, at the time, and in the manner, specified in the certificate or, if such be the case, that service of the process could not be effected for the reason so specified, and
  - (b) that the cost of effecting, or attempting to effect, service, as certified by the Master (Taxing Office), is the amount so specified.
- (6) The certificate given under paragraph (5) shall be sealed with the seal of the Supreme Court and shall be sent to the consular or other authority by whom the request for service was made.

[E.r. 3]

#### **Costs of service, etc. to be certified by the Master (Taxing Office)**

4. A statement of the costs incurred in effecting, or attempting to effect, service under rule 2 or rule 3 shall be submitted to the Master (Taxing Office) who shall certify the amount properly payable in respect of those costs.

[E.r. 4]

#### **Appointment of process server**

5. The Lord Chancellor may appoint a process server for the purposes of this Order.

[E.r. 5]

## **ORDER 70**

### **OBTAINING EVIDENCE FOR FOREIGN COURTS, ETC.**

#### **Interpretation and exercise of jurisdiction**

1.—(1) In this Order “the Act of 1975” means the Evidence (Proceedings in Other Jurisdictions) Act 1975(69);

“The Crown Solicitor” means the Crown Solicitor for Northern Ireland;

“The Master” means the Master (Queen's Bench and Appeals);

“The Secretary of State” means Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs.

(2) The power of the High Court to make an Order under section 2 of the Act of 1975 may be exercised by the Master.

[E.r. 1]

#### **Application for order**

2.—(1) Subject to paragraph (3) and rule 3, an application for an order under the Act of 1975 must be made ex parte and must be supported by affidavit.

(2) There shall be exhibited to the affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation thereof in that language.

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(3) Where on an application under section 1 of the Act of 1975 as applied by section 92 of the Patents Act 1977(70) an order is made for the examination of witnesses, the Court may allow an officer of the European Patent Office to attend the examination and examine the witnesses or request the Court or the examiner before whom the examination takes place to put specified questions to them.

[E.r. 2]

#### **Application by Crown Solicitor in certain cases**

3. Where a request—

- (a) is received by the Secretary of State and sent by him to the Master with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in Northern Ireland or any party to the matter pending or contemplated before the foreign court or tribunal, or
- (b) is received by the Master in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in Northern Ireland for the assistance of a court or tribunal in the foreign country. and no person is named in the document as the person who will make the necessary application on behalf of such party;

the Master shall send the document to the Crown Solicitor and the Crown Solicitor may, with the consent of the Treasury, make an application for an order under the Act of 1975, and, take such other steps as may be necessary, to give effect to the request.

[E.r. 3]

#### **Person to take and manner of taking examination**

4. Any order made in pursuance of this Order for the examination of a witness may order the examination to be taken before any fit and proper person nominated by the person applying for the order or before such other qualified person as to the Court seems fit.

[E.r. 4]

#### **Dealing with deposition**

5. Unless any order made in pursuance of this Order for the examination of any witness otherwise directs, the examiner before whom the examination was taken must send the deposition of that witness to the Master and the Master shall—

- (a) give a certificate sealed with the seal of the Supreme Court for use out of the jurisdiction identifying the documents annexed thereto, that is to say, the request, the order of the Court for examination and the deposition taken in pursuance of the order; and
- (b) send the certificate with the documents annexed thereto to the Secretary of State, or, where the request was sent to the Master by some other person in accordance with a Civil Procedure Convention, to that other person, for transmission to that court or tribunal.

[E.r. 5]

#### **Claim to privilege**

6.—(1) The provisions of this rule shall have effect where a claim by a witness to be exempt from giving any evidence on the ground specified in section 3(1)(b) of the Act of 1975 is not supported or conceded as mentioned in sub-section (2) of that section.

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(70) 1977 c. 37



(2) The examiner may, if he thinks fit, require the witness to give the evidence to which the claim relates and, if the examiner does not do so the Court may do so, on the ex parte application of the person who obtained the order under section 2.

(3) If such evidence is taken—

- (a) it must be contained in a document separate from the remainder of the deposition of the witness;
- (b) the examiner shall send to the Master with the deposition a statement signed by the examiner setting out the claim and the ground on which it was made;
- (c) on receipt of the statement the Master shall, notwithstanding anything in rule 5, retain the document containing the part of the witness's evidence to which the claim relates and shall send the statement and a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 5;
- (d) if the claim is rejected by the foreign court or tribunal, the Master shall send to that court or tribunal the document containing that part of the witness's evidence to which the claim relates, but if the claim is upheld he shall send the document to the witness, and shall in either case notify the witness and the person who obtained the order under section 2 of the court or tribunal's determination.

[E.r. 6]

## ORDER 71

### RECIPROCAL ENFORCEMENT OF JUDGMENTS AND ENFORCEMENT OF EUROPEAN COMMUNITY JUDGMENTS

#### 1. RECIPROCAL ENFORCEMENT

##### **Powers under relevant Acts exercisable by judge or master**

1. The powers conferred on the High Court by Part II of the Administration of Justice Act 1920<sup>(71)</sup> (in this part of this Order referred to as the “Act of 1920”) or Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933<sup>(72)</sup> (in this part of this Order referred to as the “Act of 1933”) may be exercised by a judge in chambers and a master.

[E.r. 1]

##### **Application for registration**

2.—(1) An application—

- (a) under section 9 of the Act of 1920, in respect of a judgment obtained in a superior court in any part of Her Majesty's dominions or other territory to which Part II of that Act applies, or
- (b) under section 2 of the Act of 1933, in respect of a judgment to which Part I of that Act applies,

to have the judgment registered in the High Court may be made ex parte, but the Court hearing the application may direct a summons to be issued:

- (2) If the Court directs a summons to be issued, the summons shall be an originating summons.
- (3) No appearance need be entered to an originating summons under this rule.

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<sup>(71)</sup> 1920 c. 81  
<sup>(72)</sup> 1933 c. 13

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[E.r. 2]

### **Evidence in support of application**

- 3.—(1) An application for registration must be supported by an affidavit—
- (a) exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof and, where the judgment is not in the English language, a translation thereof in that language certified by a notary public or authenticated by affidavit;
  - (b) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent;
  - (c) stating to the best of the information or belief of the deponent—
    - (i) that the judgment creditor is entitled to enforce the judgment;
    - (ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or the amount in respect of which it remains unsatisfied;
    - (iii) where the application is made under the Act of 1920, that the judgment does not fall within any of the cases in which a judgment may not be ordered to be registered under section 9 of that Act;
    - (iv) where the application is made under the Act of 1933; that at the date of the application the judgment can be enforced by execution in the country of the original court and that, if it were registered, the registration would not be, or be liable to be, set aside under section 4 of that Act;
  - (d) specifying, where the application is made under the Act of 1933, the amount of interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of registration;
  - (e) verifying that the judgment to which section 5 of the Protection of Trading Interests Act 1980(73) applies.

(2) Where a judgment sought to be registered under the Act of 1933 is in respect of different matters, and some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments, those judgments could properly have been registered, the affidavit must state the provisions in respect of which it is sought to register the judgment.

(3) In the case of an application under the Act of 1933, the affidavit must be accompanied by such other evidence with respect to the enforceability of the judgment by execution in the country of the original court, and of the law of that country under which any interest has become due under the judgment, as may be required having regard to the provisions of the Order in Council extending that Act to that country.

[E.r. 3]

### **Security for costs**

4. Save as otherwise provided by any relevant Order in Council, the Court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration.

[E.r. 4]

### **Order for registration**

5.—(1) Except where the order giving leave to register a judgment is made on summons, no such order need be served on the judgment debtor.

(2) Every such order shall state the period within which an application may be made to set aside the registration and shall contain a notification that the judgment will not be enforced until after the expiration of that period.

(3) The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.

[E.r. 5]

### **Register of judgments**

6. There shall be kept in the Central Office under the direction of the Master (Queen's Bench and Appeals) a register of the judgments ordered to be registered under the Act of 1920 and a register of the judgments ordered to be registered under the Act of 1933.

[E.r. 6]

### **Notice of registration**

7.—(1) Notice of the registration of a judgment must be served on the judgment debtor by delivering it to him personally or by sending it to him at his usual or last known place of abode or business or in such other manner as the Court may direct.

(2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11; rules 5, 6 and 8, shall apply in relation to such a notice as they apply in relation to notice of a writ.

(3) The notice of registration must state—

- (a) full particulars of the judgment registered and the order for registration,
- (b) the name and address of the judgment creditor or of his solicitor or agent on whom, and at which, any summons issued by the judgment debtor may be served,
- (c) the right of the judgment debtor to apply to have the registration set aside, and
- (d) the period within which an application to set aside the registration may be made.

[E.r. 7]

### **Application to set aside registration**

8.—(1) An application to set aside the registration of a judgment must be made by summons supported by affidavit.

(2) The Court hearing such application may order any issue between the judgment creditor and the judgment debtor to be tried in any manner in which an issue in an action may be ordered to be tried.

(3) Where the Court hearing an application to set aside the registration of a judgment registered under the Act of 1920 is satisfied that the judgment falls within any of the cases in which a judgment may not be ordered to be registered under section 9 of that Act or that it is not just or convenient that the judgment should be enforced in Northern Ireland or that there is some other sufficient reason for setting aside the registration, it may order the registration of the judgment to be set aside on such terms as it thinks fit.

[E.r. 9]

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### **Determination of certain questions**

9. If, in any case under the Act of 1933, any question arises, whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, that question shall be determined in accordance with the provisions in that behalf contained in the Order in Council extending Part I of that Act to that country.

[E.r. 11]

### **Rules to have effect subject to Orders in Council**

10. The foregoing rules shall, in relation to any judgment registered or sought to be registered under the Act of 1933, have effect subject to any such provisions contained in the Order in Council extending Part 1 of that Act to the country of the original court as are declared by the Order to be necessary for giving effect to the agreement made between Her Majesty and that country in relation to matters with respect to which there is power to make those rules.

[E.r. 12]

### **Certified copy of High Court judgment**

11.—(1) An application under section 10 of the Act of 1920 or section 10 of the Act of 1933 for a certified copy of a judgment entered in the High Court must be made ex parte on affidavit to a master.

(2) An affidavit by which an application under section 10 of the Act of 1920 is made must give particulars of the judgment, show that the judgment debtor is resident in some (stating which) part of Her Majesty's dominions or other territory to which Part II of that Act extends and state the name, trade or business and the usual or last known place of abode of the judgment creditor and the judgment debtor respectively, so far as known to the deponent.

(3) An affidavit by which an application under section 10 of the Act of 1933 is made must—

- (a) give particulars of the proceedings in which the judgment was obtained;
- (b) have annexed to it a copy of the writ originating summons or other process by which the proceedings were begun, the evidence of service thereof on, or appearance by, the defendant, copies of the pleadings, if any, and a statement of the grounds on which the judgment was based;
- (c) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;
- (d) show that the judgment is not subject to any stay of enforcement;
- (e) state that the time for appealing has expired or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been entered; and
- (f) state the rate at which the judgment carries interest.

(4) The certified copy of the judgment shall be an office copy sealed with the seal of the Supreme Court and indorsed, with a certificate signed by a master certifying that the copy is a true copy of a judgment obtained in the High Court in Northern Ireland and that it is issued in accordance with section 10 of the Act of 1920 or section 10 of the Act of 1933, as the case maybe.

(5) Where the application is made under section 10 of the Act of 1933 there shall also be issued a certificate (signed by a master and sealed with the seal of the Supreme Court) having annexed to it a copy of the writ originating summons or other process by which the proceedings were begun, and stating—

- (a) the manner in which the writ or such summons or other process was served on the defendant or that the defendant appeared thereto;

- (b) what objections, if any, were made to the jurisdiction,
- (c) what pleadings, if any, were served,
- (d) the grounds on which the judgment was based,
- (e) that the time for appealing has expired or, as the case may be, the date on which it will expire,
- (f) whether notice of appeal against the judgment has been entered, and
- (g) such other particulars as it may be necessary to give to the court in the foreign country in which it is sought to obtain enforcement of the judgment,

and a certificate (signed and sealed as aforesaid) stating the rate at which the judgment carries interest.

[E.r. 13]

### **Registration of certificates under Judgments Extension Act 1868**

12.—(1) An application for registration in the High Court under section 1 of the Judgments Extension Act 1868(74) of a certificate of a judgment of the High Court of Justice in England, or under section 3 of that Act of a certificate of an extracted decret of the Court of Session, may be made by producing at the Central Office a certificate in the appropriate form prescribed by that Act together with a copy thereof certified by the applicant's solicitor to be a true copy.

(2) Such certificate must be filed in the Central Office and the certified copy thereof, sealed with the seal of the Supreme Court, shall be returned to the applicant's solicitor.

(3) Where by virtue of the said section 1 or the said section 3 the leave of the High Court is required for the registration of a certificate of such a judgment or decret by reason of the fact that more than 12 months have elapsed since the date of the judgment or decret, the application for such leave may be made to a master ex parte by affidavit stating the reason for the delay and showing that enforcement of the judgment in Northern Ireland is likely to be effective.

(4) A certificate of a judgment of the High Court which is to be registered under the Judgments Extension Act 1868 may be obtained by producing a certificate in the appropriate form at the office in which the judgment is entered, together with an affidavit made by the solicitor of the party entitled to enforce the judgment giving particulars of the judgment and stating to the best of the information or belief of the deponent the occupation or description and the usual or last known place of abode of the party entitled to enforce the judgment and of the party liable to execution on it.

[E.r. 14]

## **II. EUROPEAN COMMUNITY JUDGMENTS**

### **Interpretation**

13. In this Part of this Order, “the Order in Council” means the European Communities (Enforcement of Community Judgments) Order 1972(75), and expressions used in the Order in Council shall, unless the context otherwise requires, have the same meanings as in that Order.

[E.r. 15]

### **Functions under Order in Council exercisable by judge or master**

14. The functions assigned to the High Court by the Order in Council may be exercised by a judge in chambers or a master.

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(74) 1868 c. 54

(75) S.I. 1972/1590 (1972 III, p. 4643)

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[E.r. 16]

### **Application for registration of Community judgments, etc.**

15. An application for the registration in the High Court of a Community judgment or Euratom inspection order may be made ex parte.

[E.r. 17]

### **Evidence in support of application**

16.—(1) An application for registration must be supported by affidavit exhibiting—

- (a) the Community judgment and the order for its enforcement or, as the case may be, the Euratom inspection order or, in either case, a duly authenticated copy thereof, and
- (b) where the Community judgment or Euratom inspection order is not in the English language, a translation into English certified by a notary public or authenticated by affidavit.

(2) Where the application is for registration of a Community judgment under which a sum of money is payable, the affidavit shall also state—

- (a) the name and occupation and the usual or last known place of abode or business of the judgment debtor, so far as known to the deponent; and
- (b) to the best of the deponent's information and belief that at the date of the application the European Court has not suspended enforcement of the judgment and that the judgment is unsatisfied or, as the case may be, the amount in respect of which it remains unsatisfied.

[E.r. 18]

### **Register of judgments and orders**

17. There shall be kept in the Central Office a register of the, Community judgments and Euratom inspection orders registered under the Order in Council.

[E.r. 19]

### **Notice of registration**

18.—(1) Upon registering a Community judgment or Euratom inspection order, the proper officer of the Court shall forthwith send notice of the registration to every person against whom the judgment was given or the order was made.

(2) The notice of registration shall have annexed to it a copy of the registered Community judgment and the order for its enforcement or, as the case may be, a copy of the Euratom inspection order, and shall state the name and address of the person on whose application the judgment or order was registered or of his solicitor or agent on whom process may be served.

(3) Where the notice relates to a Community judgment under which a sum of money is payable, it shall also state that the judgment debtor may apply within 28 days of the date of the notice, or thereafter with the leave of the Court, for the variation or cancellation of the registration on the grounds that the judgment has been partly or wholly satisfied at the date of registration.

[E.r. 20]

#### **Application to vary or cancel registration**

19. An application for the variation or cancellation of the registration of a Community judgment on the ground that the judgment had been wholly or partly satisfied at the date of registration shall be made by summons supported by affidavit.

[E.r. 22]

#### **Application for registration of suspension order**

20. An application for the registration in the High Court of an order of the European Court that enforcement of a registered Community judgment be suspended may be made ex parte by lodging a copy of the order in the Central Office.

[E.r. 23]

#### **Application for enforcement of Euratom inspection order**

21. An application for an order under Article 6 of the Order in Council for the purpose of ensuring that effect is given to a Euratom inspection order may, in case of urgency, be made ex parte on affidavit but, except as aforesaid, shall be made by motion or summons.

[E.r. 24]

### ORDER 72

[No Order made]

### ORDER 73

#### ARBITRATION PROCEEDINGS

#### **Assignment of arbitration proceedings among Divisions of High Court**

1. A cause or matter consisting of an application to the High Court under the Arbitration Act (Northern Ireland) 1937<sup>(76)</sup> or the Arbitration Act 1950<sup>(77)</sup> other than an application under section 4 of the said Act of 1937 or section 4(2) or Part II of the said Act of 1950 made in proceedings assigned to the Chancery Division, shall be assigned to the Queen's Bench Division.

[E.r. 1]

#### **Matters for a judge in court**

2.—(1) Every application to the Court—

- (a) to remit an award under section 15 of the Arbitration Act (Northern Ireland) 1937, or
- (b) to remove an arbitrator or umpire under section 27(1) of that Act, or
- (c) to set aside an award under section 27(2) thereof,

must be made by originating motion.

(2) An application for a declaration that an award made by an arbitrator or umpire is not binding on a party to the award on the ground that it was made without jurisdiction may be made by originating

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<sup>(76)</sup> 1937 c. 8 (N.I.)  
<sup>(77)</sup> 1950 c. 27

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motion but the foregoing provision shall not be taken as affecting the Court's power to refuse to make such a declaration in proceedings begun by motion.

[E.r. 2]

#### **Matters for judge in chambers or master**

3.—(1) Subject to the foregoing provisions of this Order and the provisions of this rule the jurisdiction of the High Court under the Arbitration Act (Northern Ireland) 1937 and Arbitration Act 1950 may be exercised by a judge in chambers or a master.

(2) Any application to which this rule applies shall, where an application is pending, be made by summons in the action and in any other case by an originating summons for which no appearance need be entered.

[E.r. 3]

#### **Time limits and other special provisions as to applications under the Arbitration Act (Northern Ireland) 1937**

4.—(1) An application to the Court—

- (a) to remit an, award under section 15 of the Arbitration Act (Northern Ireland) 1937, or
- (b) to set aside an award under section 7(2) of that Act

must be made, and the summons must be served, within 6 weeks after the award has been made and published to the parties.

(2) A special case stated under section 22 of the Arbitration Act (Northern Ireland) 1937 shall be heard by a judge. The decision thereon shall be deemed to be a judgment of the Court and the provisions of Order 56 shall apply thereto.

(3) In the case of every application to which this rule applies, the notice of originating motion or, as the case may be the originating summons, must state the grounds of the application and, where the application is founded on evidence by affidavit, or is made with the consent of the arbitrator or umpire or of the other parties, a copy of every affidavit intended to be used, or as the case may be, of every consent given in writing, must be served with the notice or summons.

[E.r. 5]

#### **Service out of the jurisdiction of summons, notice, etc.**

5.—(1) Service out of the jurisdiction—

- (a) of an originating summons for the appointment of an arbitrator or umpire or for leave to enforce an award, or
- (b) of notice of an originating motion to remove an arbitrator or umpire or to remit or set aside an award, or
- (c) of any order made on such a summons or motion as aforesaid,

is permissible with the leave of the Court provided that the arbitration to which the summons, motion or order relates is to be, or has been held within the jurisdiction.

(2) An application for the grant of leave under this rule must be supported by an affidavit stating the grounds on which the application is made and showing in what place or country the person to be served is, or probably may be found and no such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this rule.



(3) Order 11, rules 5, 6 and 8, shall apply in relation to any such summons, notice or order as is referred to in, paragraph (1) as they apply in relation to notice of a writ.

[E.r. 7]

### **Registration in High Court of foreign awards**

6. Where an award is made in proceedings on an arbitration in any part of Her Majesty's dominions or other territory to which Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933(78) extends, being a part to which Part II of the Administration of Justice Act 1920(79) extended immediately before the said Part I was extended thereto, then, if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place, Order 71 shall apply in relation to the award as it applies in relation to a judgment given by that court, subject, however, to the following modifications:—

- (a) for references to the country of the original court there shall be substituted references to the place where the award was made; and
- (b) the affidavit required by rule 3 of the said Order must state (in addition to the other matters required by that rule) that to the best of the information or belief of the deponent the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

[E.r. 8]

### **Registration of awards under Arbitration (International Investment Disputes) Act 1966**

7.—(1) In this rule and in any provision of these rules as applied by this rule—

“the Act of 1966” means the Arbitration (International Investment Disputes) Act 1966(80);

“award” means an award rendered pursuant to the Convention;

“the Convention” means the Convention referred to in section 1(1) of the Act of 1966;

“judgment creditor” and “judgment debtor” mean respectively the person seeking recognition or enforcement of an award and the other party to the award.

(2) Subject to the provisions of this rule, the following provisions of Order 71, namely, rules 1, 3(1) (except sub-paragraphs (c) and (d) thereof) and 7 (except paragraph (3) (c) and (d) thereof), shall apply with the necessary modifications in relation to an award as they apply in relation to a judgment to which Part II of the Foreign Judgments (Reciprocal Enforcement) Act 1933 applies.

(3) An application to have an award registered in the High Court under section 1 of the Act of 1966 shall be made by originating summons to which no appearance need be entered.

(4) The affidavit required by Order 71, rule 3, in support of an application for registration shall—

- (a) in lieu of exhibiting the judgment or a copy thereof, exhibit a copy of the award certified pursuant to the Convention, and
- (b) in addition to stating the matters mentioned in paragraph 3(1)(c)(i) and (ii) of the said rule 3, state whether at the date of the application the enforcement of the award has been stayed (provisionally or otherwise) pursuant to the Convention and whether any, and if so what, application has been made pursuant to the Convention which, if granted, might result in a stay of the enforcement of the award.

(5) There shall be kept in the Central Office a register of the awards ordered to be registered under the Act of 1966.

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(78) 1933 c. 13

(79) 1920 c. 81

(80) 1966 c. 41

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(6) Where it appears to the Court on granting leave to register an award or on an application made by the judgment debtor after an award has been registered—

- (a) that the enforcement of the award has been stayed (whether provisionally or otherwise) pursuant to the Convention, or
- (b) that an application has been made pursuant to the Convention which, if granted, might result in a stay of the enforcement of the award,

the Court shall, or, in the case referred to in sub-paragraph (b), may, stay enforcement of the award for such time as it considers appropriate in the circumstances.

(7) An application by the judgment debtor under paragraph (6) shall be made by summons and supported by affidavit.

[E.r. 9]

### **Enforcement of arbitration awards**

8.—(1) An application for leave under section 3(1)(c) of the Arbitration Act 1975<sup>(81)</sup> to enforce an award on an arbitration agreement in the same manner as a judgment or order may be made ex parte but the Court hearing the application may direct a summons to be issued.

(2) If the Court directs a summons to be issued, the summons shall be an originating summons to which no appearance need, be entered.

(3) An application for leave must be supported by affidavit—

- (a) exhibiting the documents required to be produced by section 4 of the Arbitration Act 1975;
- (b) stating the name and the usual or last known place of abode or business of the applicant (hereinafter referred to as “the creditor”) and the person against whom it is sought to enforce the award (hereinafter referred to as “the debtor”) respectively;
- (c) as the case may require either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

(4) An order giving leave must be drawn up by or on behalf of the creditor and must be served on the debtor by delivering a copy to him personally or by sending a copy to him at his usual or last known place of abode or business or in such other manner as the Court may direct.

(5) Service of the order out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8, shall apply in relation to such an order as they apply in relation to notice of a writ.

(6) Within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the Court may fix, the debtor may apply to set aside the order and the award shall not be enforced until after the expiration of that period or, if the debtor, applies within that period to set aside the order, until after the application is finally disposed of.

(7) The copy of the order served on the debtor shall state the effect of paragraph (6).

(8) In relation to a body corporate this rule shall have effect as if for any reference to the place of abode or business of the creditor or the debtor there were substituted a reference to the registered or principal address of the body corporate; so, however, that nothing in this rule shall affect any statutory provision which provides for the manner in which a document may be served on a body corporate.

[E.r. 10]

### **SPECIAL PROVISIONS AS TO PARTICULAR PROCEEDINGS**

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(81) 1975 c. 3

## ORDER 74

[No Order made]

## ORDER 75

### ADMIRALTY PROCEEDINGS

#### **Application and interpretation**

1.—(1) This Order applies to Admiralty causes and matters, and the other provisions of these Rules apply to those causes and matters subject to the provisions of this Order.

(2) In this Order—

“action in rem” means an Admiralty action in rem;

“caveat against arrest” means a caveat entered in the caveat book under rule 6;

“caveat against release and payment” means a caveat entered in the caveat book under rule 14;

“caveat book” means the book kept in the Central Office in which caveats issued under this Order are entered;

“limitation action” means an action by shipowners or other persons under the Merchant Shipping Acts 1894 to 1974 for the limitation of the amount of their liability in connection with a ship or other property;

“marshal” means the Admiralty marshal and includes the Deputy Marshal;

“Registrar” means the Registrar (Queen's Bench and Appeals);

“ship” includes any description of vessel used in navigation.

[E.r. 1]

#### **Certain actions to be assigned to Admiralty**

2.—(1) Without prejudice to Order 1 or to any other statutory provision providing for the assignment of causes and matters to the Queen's Bench Division—

(a) every action to enforce a claim for damage, loss of life or personal injury arising out of—

(i) a collision between ships, or

(ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships, or

(iii) non-compliance, on the part of one or more of two or more ships with the collision regulations,

(b) every limitation action, and

(c) every action to enforce a claim under section 1 of the Merchant Shipping (Oil Pollution) Act 1971<sup>(82)</sup> or section 4 of the Merchant Shipping Act 1974<sup>(83)</sup>

shall be assigned to that Division.

(2) In this rule “collision regulations” means regulations under section 418 of the Merchant Shipping Act 1894<sup>(84)</sup>, or any such rules as are mentioned in subsection (1) of section 421 of that Act or any rules made under subsection (2) of the said section 421.

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<sup>(82)</sup> 1971 c. 59

<sup>(83)</sup> 1974 c. 43

<sup>(84)</sup> 1894 c. 60

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[E.r. 2]

### **Proceedings against, or concerning, the International Pollution Fund**

2A.—(1) All proceedings against the International Oil Pollution Compensation Fund (in this rule referred to as “the Fund”) under section 4 of the Merchant Shipping Act 1974 shall be commenced in the Central Office.

(2) For the purpose of section 6(2) of the Merchant Shipping Act 1974, any party to proceedings brought against an owner or guarantor in respect of liability under section 1 of the Merchant Shipping (Oil Pollution) Act 1971 may give notice to the Fund of such proceedings by serving a notice in writing on the Fund together with a copy of the writ and copies of the pleadings (if any) served in the action.

(3) The Court shall, on the application made ex parte by the Fund, grant leave to the Fund to intervene in any proceedings to which the preceding paragraph applies, whether notice of such proceedings has been served on the Fund or not, and paragraphs (3) and (4) of rule 17 shall apply to such an application.

(4) Where judgment is given against the Fund in any proceedings under section 4 of the Merchant Shipping Act 1974, the Registrar shall cause a stamped copy of the judgment to be sent by post to the Fund.

(5) The Fund shall notify the Registrar of the matters set out in section 4(12)(b) of the Merchant Shipping Act 1974 by a notice in writing, sent by post to, or delivered at, the Central Office.

[E.r. 2A]

### **Issue of writ and entry of appearance**

3.—(1) An action in rem must be begun by writ, and the writ must be in Form 1 in Appendix B.

(2) Order 6, rule 6, shall apply in relation to a writ by which an Admiralty action is begun, and Order 12 shall apply in relation to such an action.

[E.r. 3]

### **Service of writ out of jurisdiction**

4.—(1) Subject to the following provisions of this rule, service out of the jurisdiction of a writ; or notice of a writ, containing any such claim as is mentioned in rule 2(1)(i) is permissible with the leave of the Court, if, but only if—

- (a) the defendant has his habitual place of business within Northern Ireland, or
- (b) the cause of action arose within inland waters of Northern Ireland or within the limits of a port of Northern Ireland, or
- (c) an action arising out of the same incident or series of incidents is proceeding in the High Court or has been heard and determined in the High Court, or
- (d) the defendant has submitted or agreed to submit to the jurisdiction of the High Court.

In this paragraph “inland waters” and “port” have the same meanings as in paragraph 4(1) of the First Schedule to the Administration of Justice Act 1956(85).

(2) Order 11, rule 3 and rule 4(1), (2) and (4), shall apply in relation to an application for a grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1 or 2 of that Order.

(3) Paragraph (1) shall not apply to an action in rem.

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(85) 1956 c. 46

(4) The proviso to rule 6(1) of Order 6 and Order 11, rule 1(2), shall not apply to a writ by which any Admiralty action is begun or to notice of any such writ.

[E.r. 4]

### **Warrant of arrest**

5.—(1) After a writ has been issued in an action in rem a warrant in Form No. 2 in Appendix B for the arrest of the property against which the action or any counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the plaintiff or, of the defendant, as the case may be.

(2) A party applying for the issue out of the Central Office of a warrant to arrest any property shall procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property.

(3) A warrant of arrest shall not be issued until the party applying for it has filed a praccipe in Form No. 3 in Appendix B requesting issue of the warrant together with an affidavit made by him or his agent containing the particulars required by paragraphs (6), (7), (8) and (10) so, however, that the Court may, if it thinks fit, allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

(4) Except with the leave of the Court or where notice has been given under paragraph (11) a warrant of arrest shall not be issued in an action in rem against a foreign ship belonging to a port of a State having a consulate in Northern Ireland, being an action for possession of the ship or for wages, until notice that the action has been begun has been sent to the consul.

(5) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem in which there is a claim arising out of bottomry until the bottomry bond and, if the bond is in a foreign language, a notarial translation thereof is produced to the Registrar.

(6) Every affidavit must state—

- (a) the name, address and occupation of the applicant for the warrant;
- (b) the nature of the claim or counterclaim in respect of which the warrant is required and that it has not been satisfied; and
- (c) the nature of the property to be arrested and, if the property is a ship, the name of the ship and the port to which she belongs.

(7) Every affidavit in an action in rem brought against a ship by virtue of paragraph 3(4) of the First Schedule to the Administration of Justice Act 1956 must state—

- (a) whether the ship against which the action is brought is the ship in connection with which the claim in the action arose;
- (b) that in the belief of the deponent the person who would, apart from paragraph 4 of the First Schedule to that Act, be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer, or in possession or control, of the ship in connection with which the claim arose and was also, at the time of the issue of the writ, the beneficial owner of all the shares in the ship against which the action is brought; and
- (c) the grounds of the deponent's belief.

(8) Every affidavit in an action in rem for possession of a ship or for wages must state the nationality of the ship against which the action is brought and that the notice (if any) required by paragraph (4) has been sent.

A copy of such notice must be exhibited to the affidavit.

(9) An affidavit in such an action as is referred to in paragraph (5) must have annexed thereto a certified copy of the bottomry bond, or of the translation thereof.

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(10) Where, by any convention or treaty, the United Kingdom has undertaken to minimise the possibility of arrest of ships of another State, no application shall be made for the issue of a warrant of arrest in an action in rem against a ship owned by that State until notice in Form No. 14 in Appendix B has been served on a consular officer at the consular office of that State in London or the port at which it is intended to cause the ship to be arrested.

In a case to which this paragraph applies the affidavit required by paragraph (3) shall state that the notice required by this paragraph has been served and a copy of the notice shall be exhibited to the affidavit.

[E.r. 5]

### **Caveat against arrest**

6.—(1) A person who desires to prevent the arrest of any property must file in the Central Office a praecipe, in Form No. 4 in Appendix B, signed by him or his solicitor undertaking—

- (a) to enter an appearance in any action that may be begun against the property described in the praecipe, and
- (b) within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding an amount specified in the praecipe or to pay the amount so specified into court;

and on the filing of the praecipe a caveat against the issue of a warrant to arrest the property described in the praecipe shall be entered in the caveat book.

(2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

[E.r. 6]

### **Remedy where property protected by caveat is arrested**

7. Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by motion for an order under this rule and, on the hearing of the application, the Court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may by order discharge the warrant and may also order the last-mentioned party to pay to the applicant damages, in respect of the loss suffered by the applicant as a result of the arrest.

[E.r. 7]

### **Service of writ in action in rem**

8.—(1) Subject to paragraph (2), a writ by which an action in rem is begun must be served on the property against which the action is brought except—

- (a) where that property is freight, in which case it must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried, or
- (b) where that property has been sold and the proceeds of sale paid into court, in which case it must be served on the Registrar.

(2) A writ need not be served on the property mentioned in paragraph (1) or the Registrar if the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(4) or (5).

(3) Where by virtue of this rule a writ is required to be served on any property, the plaintiff may request service of the writ to be effected by the marshal if, but only if, a warrant of arrest has been issued for service against the property or the property is under arrest, and in that case the plaintiff must file in the Central Office a praecipe in form No. 5 in Appendix B and lodge—

- (a) the writ and copy thereof, and
- (b) an undertaking to pay on demand all expenses incurred by the marshal or his substitute in respect of the service of the writ,

and thereupon the marshal or his substitute shall serve the writ on the property described in the praecipe.

(4) Where the plaintiff in an action in rem, or his solicitor, becomes aware that there is in force a caveat against arrest with respect to the property against which the action is brought, he must serve the writ forthwith on the person at whose instance the caveat was entered.

(5) Where a writ by which an action in rem is begun is amended under Order 20, rule 1, after service thereof, Order 20, rule 1(2), shall not apply and, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on any defendant who has entered an appearance in the action or, if no defendant has entered an appearance therein, on the property mentioned in paragraph (1) or the Registrar.

[E.r. 8]

#### **Committal of solicitor failing to comply with undertaking**

9. Where the solicitor of a party to an action in rem fails to comply with a written undertaking given by him to any other party or his solicitor to enter an appearance in the action, give bail or pay money into court in lieu of bail, he shall be liable to committal.

[E.r. 9]

#### **Execution, etc., of warrant of arrest**

10.—(1) A warrant of arrest is valid for 12 months beginning with the date of its issue.

(2) A warrant of arrest may be executed only by the marshal or his substitute.

(3) A warrant of arrest shall not be executed until an undertaking to pay on demand the fees of the marshal and all expenses incurred by him or on his behalf in respect of the arrest of the property and the care and custody of it while under arrest has been lodged in the marshal's office.

(4) A warrant of arrest shall not be executed if the party at whose instance it was issued lodges a written request to that effect with the marshal.

(5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.

(6) Subject to paragraph (5), a warrant of arrest must be served on the property against which it is issued.

(7) Within 7 days after the service of a warrant of arrest, the warrant must be filed in the Central Office.

[E.r. 10]

#### **Service on ships, etc. : how effected**

11.—(1) Subject to paragraph (2), service of a warrant of arrest or writ in an action in rem against a ship, freight or cargo shall be effected by—

- (a) affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure, and
- (b) on removing the warrant or writ, leaving a copy of it affixed (in the case of the warrants) in its place or (in the case of the writ) on a sheltered, conspicuous part of the ship.

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(2) Service of a warrant of arrest or writ in an action in rem against freight or cargo or both shall, if the cargo has been landed or transhipped, be effected—

- (a) by placing the warrant or writ for a short time on the cargo and, on removing the warrant or writ, leaving a copy of it on the cargo, or
- (b) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or writ with that person.

[E.r. 11]

### **Applications with respect to property under arrest**

12.—(1) The marshal may at any time apply to the Court for directions with respect to property under arrest in an action and may, or, if the Court so directs, shall, give notice of the application to any or an of the parties to every action against the property.

(2) The marshal shall send a copy of any order made under paragraph (1) to all parties to every action against the property to which the order relates.

[E.r. 12]

### **Release of property under arrest**

13.—(1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property which has been so arrested shall only be released under the authority of an instrument of release (in this rule referred to as a “release”), in Form No. 6 in Appendix B, issued out of the Central Office.

(2) A party at whose instance any property was arrested may, before an appearance is entered in the action, file a notice withdrawing the warrant of arrest and, if he does so, a release shall, subject to paragraphs (3) and (5), be issued with respect to that property.

(3) Unless the Court otherwise orders, a release shall not be issued with respect to property as to which a caveat against release is in force.

(4) A release may be issued at the instance of a party interested in the property under arrest if the Court, so orders, or, subject to paragraph (3), if all the other parties to the action in which the warrant of arrest was issued consent.

(5) Before a release is issued the party entitled to its issue must—

- (a) if there is a caveat against release in force as to the property in question, give notice to the party at whose instance it was entered or his solicitor requiring the caveat to be withdrawn, and
- (b) file a praecipe in Form No. 7 in Appendix B requesting issue of a release.

(6) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the marshal, either—

- (a) pay the fees of the marshal already incurred and lodge in the marshal's office an undertaking to pay on demand the other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release, or
- (b) lodge in the marshal's office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred.

(7) The Court, on the application of any party who objects to directions given to him by the marshal under paragraph (6), may vary or revoke the directions.

[E.r. 13]



### **Caveat against release and payment**

14.—(1) A person who desires to prevent the release of any property under arrest in an action in rem and the payment out of Court of any money in court representing the proceeds of sale of that property must file in the Central Office a praecipe in Form No. 8 in Appendix B, and on the filing of the praecipe a caveat against the issue of a release with respect to that property and the payment out of court of that money shall be entered in the caveat book.

(2) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the Court by motion for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

[E.r. 14]

### **Duration of caveats**

15.—(1) Every caveat entered in the caveat book is valid for 6 months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a praecipe in Form No. 9 in Appendix B.

(2) The period of validity of a caveat may not be extended but this provision shall not be taken as preventing the entry of successive caveats.

[E.r. 15]

### **Bail**

16.—(1) Bail on behalf of a party to an action in rem must be given by bond in Form No. 10 in Appendix B; and the sureties to the bond must enter into the bond before a commissioner to administer oaths, not being a commissioner who, or whose partner, is acting as solicitor or agent for the party on whose behalf the bail is to be given, or before the Registrar.

(2) Subject to paragraph (3), a surety to a bail bond must make an affidavit stating that he is able to pay the sum for which the bond is given.

(3) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit shall be made under paragraph (2) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.

(4) The party on whose behalf bail is given must serve on the Opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the commissioner or Registrar before whom the bail bond was entered into; and after the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) he may file the bond and must at the same time file the affidavits (if any) made under paragraph (2) and an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

[E.r. 16]

### **Interveners**

17.—(1) Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant to the action may, with the leave of the Court, intervene in the action.

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(2) An application for the grant of leave under this rule must be made ex parte by affidavit showing the interest of the applicant in the property against which the action is brought or in the money in court.

(3) A person to whom leave is granted to intervene in an action must enter an appearance therein in the Central Office within the period specified in the order granting leave; and Order 12, rules 1 to 4, shall, with the necessary modifications, apply in relation to the entry of appearance by an intervener as if he were a defendant named in the writ.

(4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period as may be specified in the order, serve on every other party to the action such pleading as may be so specified.

[E.r. 17]

### **Preliminary acts**

18.—(1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, unless the Court otherwise orders, the plaintiff must, within 2 months after issue of the writ, and the defendant must, within 2 months after entering an appearance in the action, and before any pleading is served, lodge in the Central Office a document (in these rules referred to as a preliminary act) containing a statement of the following particulars :—

- (i) the names of the ships which came into collision and their ports, of registry;
- (ii) the date and time of the collision;
- (iii) the place of the collision;
- (iv) the direction and force of the wind;
- (v) the state of the weather;
- (vi) the state, direction and force of the tidal or other current;
- (vii) the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with, reference to her presence, whichever was the earlier;
- (viii) the lights (if any) carried by the ship;
- (ix)
  - (a) the distance and bearing of the other ship if and when her echo was first observed by radar;
  - (b) the distance, bearing and approximate heading of the other ship when first seen;
- (x) what light or combination of lights (if any) of the other ship was first seen;
- (xi) what other lights or combinations of lights (if any) of the other ship were subsequently seen before the collision, and when;
- (xii) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in article (vii) up to the time of the collision, and, when, and what measures (if any), other than alterations of course and speed, were taken to avoid the collision, and when;
- (xiii) the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;
- (xiv) what sound signals (if any) were given, and when;
- (xv) what sound signals (if any) were heard from the other ship, and when.

(2) Every preliminary act shall be sealed by the proper officer and shall be filed in a closed envelope (stamped with an official stamp showing the date of filing) and, unless the Court otherwise

orders, no envelope shall be opened until the pleadings are closed and a consent signed by each of the parties or his solicitor to the opening of the preliminary acts is filed with the proper officer.

(3) Where the Court orders the preliminary acts to be opened, the Court may further order the action to be tried without pleadings but, where the Court orders the action to be so tried, any party who intends to rely on the defence of compulsory pilotage must give notice of his intention to do so to the other parties within 7 days after the opening of the preliminary acts.

(4) Where the Court orders the action to be tried without pleadings, it may also order each party, within such period as may be specified in the order, to file a statement of the grounds on which he charges any other party with negligence in connection with the collision and to serve a copy thereof on that other party.

(5) Order 18, rule 1, shall not apply to an action in which preliminary acts are required but, unless the Court orders the action to be tried without pleadings, the plaintiff must serve a statement of claim on each defendant within 14 days after the latest date on which the preliminary act of any party to the action is filed.

[E.r. 18]

#### **Failure to lodge preliminary act: proceedings against party in default**

19.—(1) Where in such an action as is referred to in rule 18(1) the plaintiff fails to lodge a preliminary act within the prescribed period, any defendant who has lodged such an act may apply to the Court by summons for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

(2) Where in such an action, being an action in personam, a defendant fails to lodge a preliminary act within the prescribed period, Order 19, rules 2 and 3, shall apply as if the defendant's failure to lodge the preliminary act within that period were a failure by him to serve a defence on the plaintiff within the period fixed by or under these rules for service thereof, and the plaintiff, if he has lodged a preliminary act may, subject to Order 77, rule 9, accordingly enter judgment against that defendant in accordance with the said rule 2 or the said rule 3, as the circumstances of the case require.

(3) Where in such an action, being an action in rem, a defendant fails to lodge a preliminary act within the prescribed period, the plaintiff, if he has lodged such an act, may apply to the Court by motion for judgment against that defendant, and it shall not be necessary for the plaintiff to file or serve a statement of claim or an affidavit before the hearing of the motion.

(4) On the hearing of a motion under paragraph (3) the Court may make such order as it thinks just, and where the defendant does not appear on the hearing and the Court is of opinion that judgment should be given for the plaintiff provided he proves his case, it shall order the plaintiff's preliminary act to be opened and require the plaintiff to satisfy the Court that his claim is well founded.

The plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(5) Where the plaintiff in accordance with a requirement under paragraph (4) satisfies the Court that his claim is well founded, the Court may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action is brought to be appraised and sold and the proceeds to be paid into court or make such an order as it thinks just.

(6) The Court may, on such terms as it thinks just, set aside any judgment entered in pursuance of this rule.

(7) In this rule references to the prescribed period shall be construed as references to the period within which by virtue of rule 18(1) or of any order of the Court the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act.

[E.r. 19]

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### **Special provisions as to pleadings in collision, etc. actions**

20.—(1) Notwithstanding anything in Order 18, rule 3, the plaintiff in any such action as is referred to in rule 2(1)(a) may not serve a reply or a defence to counterclaim on the defendant except with the leave of the Court.

(2) If in such an action there is a counterclaim and no defence to counterclaim by the plaintiff, then, notwithstanding Order 18, rule 14(3), but without prejudice to the other provisions of that rule, there is an implied joinder of issue on the counterclaim, and the joinder of issue operates as a denial of every material allegation of fact made in the counterclaim.

[E.r. 20]

### **Judgment by default**

21.—(1) Where a writ is served under rule 8(4) on a party at whose instance a caveat against arrest was issued, then if—

- (a) the sum claimed in the action begun by the writ does not exceed the amount specified in the undertaking given by that party or his solicitor to procure the entry of the caveat, and
- (b) that party or his solicitor does not within 14 days after service of the writ fulfil the undertaking given by him as aforesaid,

the plaintiff may, after filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.

(2) Judgment given under paragraph (1) may be enforced by the arrest of the property against which the action was brought and by committal of the party at whose instance the caveat with respect to that property was entered.

(3) Where a defendant to an action in rem fails to enter an appearance within the time limited for appearing, then, on the expiration of 14 days after service of the writ and upon filing an affidavit proving due service of the writ, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

Where the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(4) or was served on the Registrar under rule 8 of this Order, an affidavit proving due service of the writ need not be filed under this paragraph, but the writ indorsed as mentioned in the said rule 1(4) or indorsed by the Registrar with a statement that he accepts service of the writ must be lodged with the affidavit verifying the facts on which the action is based.

(4) Where a defendant to an action in rem fails to serve a defence on the plaintiff, then, after the expiration of the period fixed by or under these Rules for service of the defence and upon filing an affidavit stating that no defence was served on him by that defendant during that period, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

(5) Where a defendant to a counterclaim in an action in rem fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (6), after the expiration of the period fixed by or under these Rules for service of the defence to counterclaim and upon filing an affidavit stating that no defence to counterclaim was served on him by the first-mentioned defendant during that period; an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, the defendant making the counterclaim may apply to the Court for judgment by default.

(6) No application may be made under paragraph (5) against the plaintiff in any such action as is referred to in rule 2(1)(a).

(7) An application to the Court under this rule must be made by motion and if, on the hearing of the motion, the Court is satisfied that the applicant's claim is well founded it may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be put into court or may make such other order as it thinks just.

(8) In default actions in rem evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(9) The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this rule.

(10) Order 13 and Order 19 (except rule 1) shall not apply to actions in rem.

[E.r. 21]

### **Order for sale of ship: determination of priority of claims**

22.—(1) Where in an action in rem against a ship the Court has ordered the ship to be sold, any party who has obtained or obtains judgment against the ship or proceeds of sale of the ship may—

- (a) in a case where the order for sale contains the further order referred to in paragraph (2), after the expiration of the period specified in the order under paragraph (2)(a), or
- (b) in any other case, after obtaining judgment,

apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.

(2) Where in an action in rem against a ship the Court orders the ship to be sold, it may further order—

- (a) that the order of priority of the claims against the proceeds of sale of the ship shall not be determined until after the expiration of 90 days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into court;
- (b) that any party to the action or to any other action in rem against the ship or the proceeds of sale thereof may apply to the Court in the action to which he is a party to end the period specified in the order;
- (c) that within 7 days after the date of payment into court of the proceeds of sale the marshal shall send for publication in Lloyd's List and Shipping Gazette and such other newspaper, if any, as the Court may direct, a notice complying with paragraph (3).

(3) The notice referred to in paragraph (2)(c) must state—

- (a) that the ship (naming her) has been sold by order of the High Court in an action in rem, identifying the action;
- (b) that the gross proceeds of the sale, specifying the amount thereof, have been paid into court;
- (c) that the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period (specifying it) specified in the order for sale; and
- (d) that any person with a claim against the ship or the proceeds of sale thereof, on which he intends to proceed to judgment should do so before the expiration of that period.

(4) The marshal must lodge in the Central Office a copy of each newspaper in which the notice referred to in paragraph (2)(c) appeared.

(5) The expenses incurred by the marshal in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the ship.

(6) An application to the Court to extend the period referred to in paragraph (2)(a) must be made by motion, and a copy of the notice of motion must, at least 3 days before the day fixed for the

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hearing thereof, be served on each party who has begun an action in rem against the ship or the proceeds of sale thereof.

(7) In this rule “the Court” means the judge in person.

[E.r. 22]

### **Appraisalment and sale of property**

23.—(1) A commission for the appraisalment and sale of any property under an order of the Court shall not be issued until the party applying for it has filed a praecipe in Form No. 11 in Appendix B.

(2) Such a commission must, unless the Court otherwise orders, be executed by the marshal and must be in Form No. 12 in Appendix B.

(3) A commission for appraisalment and sale shall not be executed until an undertaking in writing satisfactory to the marshal to pay the fees and expenses of the marshal on demand has been lodged in the marshal's office.

(4) The marshal shall pay into court the gross proceeds of the sale of any property sold by him under a commission for sale and shall bring into court the account relating to the sale (with vouchers in support) for taxation.

(5) On the taxation of the marshal's account relating to a sale any person interested in the proceeds of the sale shall be entitled to be heard, and any decision of the Registrar made on the taxation to which objection is taken may be reviewed in the same manner and by the same persons as any decision made in taxation proceedings under Order 62, and rules 35 to 37 of that Order shall apply accordingly with the necessary modifications.

[E.r. 23]

### **Undertakings as to expenses, etc.**

23A.—(1) Every undertaking under rule 8(3), 10(3); 13(7) or 23(3) shall be given in writing to the satisfaction of the marshal.

(2) Where a party is required by rule 8(3), 10(3), 13(7) or 23(3) to give to the marshal an undertaking to pay any fees or expenses, the marshal may accept instead of an undertaking the deposit with him of such sum as he considers reasonable to meet those fees and expenses.

(3) The Court may on the application of any party who is dissatisfied with a direction or determination of the marshal under rule 13(7) of this rule, vary or revoke the direction or determination.

[E.r. 23A]

### **Payment into and out of court**

24.—(1) Order 22 (except rules 3, 4, S and 11) shall apply in relation to an Admiralty action as it applies to an action for a debt or damages.

(2) Subject to paragraphs (3) and (4) money paid into court shall not be paid out except in pursuance of an order of the judge in person.

(3) The Registrar may, with the consent of the parties interested in money paid into court, order the money to be paid out to the person entitled thereto in the following cases, that is to say—

- (a) where a claim has been referred to the Registrar for decision and all the parties to the reference have agreed to accept the Registrar's decision and to the payment out of any money in court in accordance with that decision;

(b) where property has been sold and the proceeds of sale thereof paid into court, and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each of the persons;

(c) where in any other case there is no dispute between the parties.

(4) Where in an Admiralty action money has been paid into court pursuant to an order made under Order 29, rule 12, the Registrar may make an order under paragraph (3) of that rule for the money to be paid out to the person entitled thereto.

[E.r. 24]

### **Summons for directions**

25.—(1) The time and place and mode of trial of an Admiralty action shall be settled by the judge on the hearing of a summons and such summons shall be served on the plaintiff within one month after the pleadings in the action are deemed to be closed, and in case the plaintiff shall not serve such summons within the time aforesaid, then any other party in the action may serve such summons, and on the hearing of such summons any party may apply for discovery including interrogatories, commissions for and examination of witnesses. Such summons shall not be necessary if a consent be filed in the registry whereby the parties agree on the time, place and mode of trial.

(2) Unless a judge in person otherwise directs, the summons shall be heard by a judge in person.

(3) An order made on the summons shall determine whether the trial is to be without assessors or with one or more assessors.

[E.r. 25]

### **Fixing date for trial, etc.**

26.—(1) The Court may at any stage of an action, either on an application made by summons by any party or by order made by virtue of rule 34, fix a date for the trial and vacate or alter any such date.

(2) Not later than 7 days after a date for the trial of the action has been fixed, the action must be set down for trial—

(a) where the date was fixed on an application made under paragraph (1), by the applicant;

(b) where the date was fixed by order made by virtue of rule 34, by the plaintiff.

Where the applicant or plaintiff does not, within the period fixed by this paragraph, set the action down for trial, any other party may set it down or an application may be made to the Court to dismiss the action for want of prosecution and, on the hearing of any such application, the Court may order the action to be dismissed accordingly or make such other order as it thinks just.

(3) Not less than 7 days before the date fixed for the trial, or such other period before that date as may be specified in general directions given by the Lord Chief Justice the party by whom the action was set down for trial must, unless the Court otherwise orders, file in the registry—

(a) if trial with one or more assessors has been ordered, a praecipe for his or their attendance, and

(b) three copies or, in the case of a trial with one or more assessors, four copies (if with one assessor) and five copies (if with two) of any pleadings, preliminary acts, notices given under rule 18(3) and statements filed under rule 18(4).

(4) If an action which has been set down for trial is settled or withdrawn it shall be the duty of all the parties to notify the Central Office of the fact without delay and take such steps as may be necessary to vacate the date fixed for the trial.

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(5) Order 21, rule 2(4), Order 33, rule 4, and Order 34 (except rule 9) shall not apply to Admiralty actions.

[E.r. 26]

#### **Stay of proceedings in collision, etc. actions until security given**

27. Where an action in rem, being an action to enforce any such claim as is referred to in rule 2(1)(a), is begun and a cross action in rem arising out of the same collision or other occurrence as the first mentioned action is subsequently begun, or a counterclaim arising out of that occurrence is made in the first mentioned action, then—

- (a) if the ship in respect of or against which the first mentioned action is brought has been arrested or security given to prevent her arrest, but
- (b) the ship in respect of or against which the cross action is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the cross action or making the counterclaim,

the Court may stay proceedings in the first mentioned action until security is given to satisfy any judgment given in favour of that party.

[E.r. 27]

#### **Inspection of ship, etc.**

28. Without prejudice to its powers under Order 29, rules 2 and 4, and Order 35, rule 5, the Court may, on the application of any party, make an order for the inspection by the assessors (if the action is tried with assessors), or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

[E.r. 28]

#### **Examination of witnesses and other persons**

29.—(1) The court may make an order authorising the examination of a witness or person on oath before a judge sitting-in court as if for the trial of the cause or matter, without that cause or matter having been set down for trial or called on for trial.

(2) The power conferred by paragraph (1) shall also extend to the making of an order, with the consent of the parties, providing for the evidence of a witness being taken as if before an examiner, but without an examiner actually being appointed or being present.

(3) Where an order is made under paragraph (2), it may make provision for any consequential matters and, subject to any provision so made, the following provisions shall have effect—

- (a) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness;
- (b) any representative, being counsel or solicitor, of either of the parties shall have authority to administer the oath to the witness;
- (c) the shorthand writer need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the solicitor for the party whose witness was examined, and that solicitor must file it in the registry;
- (d) unless the parties otherwise agree or the Court otherwise orders, the transcript or a copy thereof shall, before the transcript is filed, be made available to the counsel or other persons who acted as advocates at the examination, and if any of those persons is of opinion that the transcript does not accurately represent the evidence he shall make a certificate specifying



the corrections which in his opinion should be made therein, and that certificate must be filed with the transcript.

(4) In actions in which preliminary acts fall to be filed under rule 18, an order shall not be made under paragraph (1) authorising any examination of a witness before the preliminary acts have been filed, unless for special reasons the Court thinks fit so to direct.

(5) The Lord Chief Justice may appoint such number of barristers or solicitors as he thinks fit to act as examiners of the Court in connection with Admiralty causes and matters, and may revoke any such appointment.

[E.r. 30]

### **Trial as an Admiralty short cause**

30.—(1) Where any defendant has entered an appearance in an Admiralty action, the plaintiff or that defendant may, within 7 days after the entry of the appearance, apply by summons, returnable before the Registrar, for an order that the action be tried as an Admiralty short cause.

(2) The summons shall be served on every other party to the action not less than 7 days before the hearing.

(3) On the hearing of the application the Registrar may, if he decides to make an order under paragraph (1)—

- (a) exercise any power which could be exercised under Order 18, rule 21 or Order 75, rule 18(4), on an application for the trial of the action without pleadings or further pleadings,
- (b) abridge the period within which a person is required or authorised by these rules to do any act in the proceedings and fix the period within which any notice under Order 38, rule 19, must be served,
- (c) in the case of such an action as is referred to in rule 18(1), fix the time within which, notwithstanding the provisions of that rule, preliminary acts are to be lodged;
- (d) require the parties to the action to make mutual discovery of documents notwithstanding that the action is ordered to be tried without pleadings,
- (e) if the parties so agree, order that the evidence in support of their respective cases may be given in whole or in part by the production of documents or entries in books,
- (f) give such directions as could be given on a summons for directions in the action; and
- (g) fix a date for the trial of the action.

(4) The party taking out a summons under this rule shall include in it an application for such orders or directions as he desires the Registrar to make or give in the exercise of powers set out in paragraph (3), and any party on whom the summons is served shall, within 3 days after service of the summons on him give notice to every other party of any other order or direction he desires the Registrar to make or give as aforesaid and lodge a copy of such notice in the registry.

(5) An application for an order under Order 18, rule 21, that an Admiralty action be tried without pleadings or further pleadings shall be made by way of an application for an order under paragraph (1) and not otherwise.

(6) Where an order is made under paragraph (1), the writ or originating summons by which the action was begun shall be marked in the top left-hand corner “Admiralty Short Cause”.

(7) Any application subsequent to a summons under paragraph (1) and before judgment as to any matter capable of being dealt with on an interlocutory application in the action shall be made under the summons by 2 clear days' notice to the other party stating the grounds of the application.

[E.r. 31]

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### **Further provisions with respect to evidence**

31.—(1) Notwithstanding anything in Order 38, rule 6, rules 1 and 2 of that Order shall not apply to a reference to the Registrar.

(2) Unless the Court otherwise directs, Order 38, rule 19(1), shall not apply in relation to any statement which is admissible in evidence by virtue of section 1 or 2 of the Civil Evidence Act (Northern Ireland) 1971<sup>(86)</sup> and which an applicant for judgment in, default under rule 19 or 21 desires to give in evidence at the hearing of the motion by which the application for judgment is made.

(3) In any Admiralty action in which a summons for directions is required by virtue of rule 37(7) to be taken out, any notice under Order 38, rule 19, must, if given by the party who takes out that summons, be served with that summons and, if given by any other party, be served within 21 days after service of the summons for directions on him.

(4) In any proceedings on a reference to the Registrar any notice under Order 38, rule 19, must be served not less than 6 weeks before the day appointed for the hearing of the reference.

(5) On the day on which any party serves on any other party a notice under Order 38, rule 19, or a counter-notice under Order 38, rule 23, he must lodge two copies of the notice or counter-notice in the Central Office.

(6) Unless the Court otherwise directs, an affidavit for the purposes of rule 19(4), 21 or 37(2) may, except in so far as it relates to the service of a writ, contain statements of information or belief with the sources and grounds thereof.

[E.r. 32]

### **Proceedings for apportionment of salvage**

32.—(1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained shall be assigned to the Queen's Bench Division and be begun by originating motion.

(2) The notice of such motion, together with the affidavits in support thereof, must be filed in the Central Office 7 days at least before the hearing of the motion, unless the Court gives leave to the contrary, and a copy of the notice and of the affidavits must be served on all the other parties to the proceedings before the originals are filed.

(3) On the hearing of the motion the judge may exercise any of the jurisdiction conferred by section 556 of the Merchant Shipping Act 1894.

[E.r. 33]

### **Filing and service of notice of motion**

33.—(1) Notice of a motion in any action, together with the affidavits (if any) in support thereof, must be filed in the Central Office 3 days at least before the hearing of the motion unless the Court gives leave to the contrary.

(2) A copy of the notice of motion and of the affidavits (if any) in support thereof must be served on all the other parties to the proceedings before the originals are filed.

[E.r. 34]

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<sup>(86)</sup> 1971 c. 36 (N.I.)

### **Agreement between solicitors may be made order of court**

34. Any agreement in writing between the solicitors of the parties to a cause or matter, dated and signed by those solicitors, may, if the Registrar thinks it reasonable and such as a judge would under the circumstances allow, be filed in the Central Office, and the agreement shall thereupon become an order of court and have the same effect as if such order had been made by a judge in person.

[E.r. 35]

### **Originating summons procedure**

35.—(1) An originating summons in Admiralty may be issued out of the Central Office.

(2) Order 12 shall apply in relation to an originating summons in Admiralty to which appearance is required to be entered.

(3) Order 28, rule 2, shall apply in relation to Admiralty proceedings begun by originating summons.

(4) Rule 26 (except paragraph (3)) shall, with any necessary modifications, apply in relation to an Admiralty cause or matter begun by originating summons, and Order 28, rule 9, shall not apply to such a cause or matter.

[E.r. 36]

### **Limitation action: parties**

36.—(1) In a limitation action the person seeking relief shall be the plaintiff and shall be named in the writ by his name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(2) The plaintiff must make one of the persons with claims against him in respect of the casualty to which the action relates defendant to the action and may make any or all of the others defendants also.

(3) At least one of the defendants to the action must be named in the writ by his name but the other defendants may be described generally and not named by their names.

(4) The writ must be served on one or more of the defendants who are named by their names therein and need not be served on any other defendant.

(5) in this rule and rules 37, 38 and 39 “name” includes a firm name or the name under which a person carries on his business, and where any person with a claim against the plaintiff in respect of the casualty to which the action relates has described himself for the purposes of his claim merely as the owner of, or as bearing some other relation to, a ship or other property, he may be so described as defendant in the writ and, if so described; shall be deemed for the purposes of the rules aforesaid to have been named in the writ by his name.

[E.r. 37]

### **Limitation action: summons for decree or directions**

37.—(1) Within 21 days after the entry of appearance by one of the defendants named by their names in the writ, or, if none of them enters an appearance, within 21 days after the time limited for appearing, the plaintiff, without serving a statement of claim, must take out a summons returnable in chambers before the Registrar asking for a decree limiting his liability or, in default of such a decree, for directions as to the further proceedings in the action.

(2) The summons must be supported by an affidavit or affidavits proving—

(a) the plaintiff's case in the action, and

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- (b) if none of the defendants named in the writ by their names has entered an appearance, service of the writ on at least one of the defendants so named.
- (3) The affidavit in support of the summons must state—
  - (a) the names of all the persons who, to the knowledge of the plaintiff, have claims against him in respect of the casualty to which the action relates, not being defendants to the action who are named in the writ by their names, and
  - (b) the address of each of those persons, if known to the plaintiff.
- (4) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on any defendant who has entered an appearance.
- (5) On the hearing of the summons the Registrar, if it appears to him that it is not disputed that the plaintiff has a right to limit his liability, shall make a decree limiting the plaintiff's liability and fix the amount to which the liability is to be limited.
- (6) On the hearing of the summons the Registrar, if it appears to him that any defendant has not sufficient information to enable him to decide whether or not to dispute that the plaintiff has a right to limit his liability, shall give such directions as appear to him to be appropriate for enabling the defendant to obtain such information and shall adjourn the hearing.
- (7) If on the hearing or resumed hearing of the summons the Registrar does not make a decree limiting the plaintiff's liability, he shall give such directions as to the further proceedings in the action as appear to him to be appropriate including a direction fixing the period within which any notice under Order 38, rule 19, must be served.
- (8) Any defendant who, after the Registrar has given directions under paragraph (7), ceases to dispute the plaintiff's right to limit his liability must forthwith file a notice to that effect in the Central Office and serve a copy on the plaintiff and on any other defendant who has entered an appearance.
- (9) If every defendant who disputes the plaintiff's right to limit his liability serves a notice on the plaintiff under paragraph (8), the plaintiff may take out a summons returnable in chambers before the Registrar asking for a decree limiting his liability; and paragraphs (4) and (5) shall apply to a summons under this paragraph as they apply to a summons under paragraph (1).

[E.r. 38]

**Limitation action: proceedings under decree**

38.—(1) Where the only defendants in a limitation action are those named in the writ by their names and all the persons so named have either been served with the writ or entered an appearance, any decree in the action limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action)—

- (a) need not be advertised, but
  - (b) shall only operate to protect the plaintiff in respect of claims by the persons so named or persons claiming through or under them.
- (2) In any case not falling within paragraph (1), any decree in the action limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action)—
- (a) shall be advertised by the plaintiff in such manner and within such time as may be provided by the decree;
  - (b) shall fix a time within which persons with claims against the plaintiff in respect of the casualty to which the action relates may enter an appearance in the action (if they have not already done so) and file their claims, and, in cases to which rule 39 applies, take out a summons, if they think fit, to set the order aside.
- (3) The advertisement to be required under paragraph (2)(a) shall, unless for special reasons the Registrar or judge thinks fit otherwise to provide, be a single advertisement in each of three

newspapers specified in the decree, identifying the action, the casualty and the relation of the plaintiff thereto (whether as owner of a ship involved in the casualty or otherwise as the case may be), stating that the decree has been made and specifying the amounts fixed thereby as the limits of the plaintiff's liability; and the time allowed thereby for the entering of appearances, the filing of claims and the taking out of summonses to set the decree aside.

The plaintiff must Within the time fixed under paragraph (2)(b) file in the registry a copy of each newspaper in which the advertisement under paragraph (2)(a) appears.

(4) The time to be allowed under paragraph (2)(b) shall, unless for special reasons the Registrar or judge thinks fit otherwise to provide, be not less than 2 months from the latest date allowed for the appearance of the advertisements; and after the expiration of the time so allowed, no appearance may be entered, claim filed or summons taken out to set aside the decree except with the leave of the Registrar or, on an appeal, of the judge.

(5) Save as aforesaid, any decree limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action) may make any such provision as is authorised by section 504 of the Merchant Shipping Act 1894.

[E.r. 39]

#### **Limitation action: proceedings to set aside decree**

39.—(1) Where a decree limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action) fixes a time in accordance with rule 38(2), any person with a claim against the plaintiff in respect of the casualty to which the action relates, who—

- (a) was not named by his name in the writ as a defendant to the action, or
- (b) if so named, neither was served with the writ nor entered an appearance,

may, within that time, after entering an appearance, take out a summons returnable in chambers before the Registrar asking that the decree be set aside.

(2) The summons must be supported by an affidavit or affidavits showing that the defendant in question has a bona fide claim against the plaintiff in respect of the casualty in question and that he has sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree.

(3) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on the plaintiff and any defendant who has entered an appearance.

(4) On the hearing of the summons the Registrar, if he is satisfied that the defendant in question has a bona fide claim against the plaintiff and sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree, shall set the decree aside and give such directions as to the further proceedings in the action as appear to him to be appropriate.

[E.r. 40]

#### **References to Registrar**

40.—(1) Any party (hereafter in this rule referred to as the “claimant”) making a claim which is referred to the Registrar for decision must, within 2 months after the order is made, or, in a limitation action, within such other period as the Court may direct, file his claim and, unless the reference is in such an action, serve a copy of the claim on every other party.

(2) At any time after the claimant's claim has been filed or, where the reference is in a limitation, action, after the expiration of the time limited by the Court for the filing of claims but, in any case, not less than 28 days before the day appointed for the hearing of the reference, any party to the cause or matter may apply to the Registrar by summons for directions as to the proceedings on the reference, and the Registrar shall give such directions, if any, as he thinks fit including, without prejudice to the

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generality of the foregoing words, a direction requiring any party to serve on any claimant, within such period as the Registrar may specify, a defence to that claimant's claim.

(3) The reference shall be heard on a day appointed by the Registrar and, unless the reference is in a limitation action or the parties to the reference consent to the appointment of a particular day, the appointment must be made by order on an application by summons made by any party to the cause or matter.

(4) An appointment for the hearing of a reference shall not be made until after the claimant has filed his claim or, where the reference is in a limitation action, until after the expiration of the time limited by the Court for the filing of claims.

(5) Not later than 7 days after an appointment for the hearing of a reference has been made the claimant or, where the reference is in a limitation action, the plaintiff must enter the reference for hearing by lodging in the registry by praecipe requesting the entry of the reference in the list for hearing on the day appointed.

(6) Not less than 14 days before the day appointed for the hearing of the reference the claimant must file—

- (a) a list, signed by him and every other party, of the items (if any) of his claim which are not disputed, stating the amount (if any) which he and the other parties agree should be allowed in respect of each such item, and
- (b) such affidavits or other documentary evidence as is required to support the items of his claim which are disputed;

and, unless the reference is in a limitation action, he must at the same time serve on every other party a copy of every document filed under this paragraph.

(7) If the claimant fails to comply with paragraph (1) or (6)(b); the Court may, on the application of any other party to the cause or matter, dismiss the claim.

[E.r. 41]

### **Hearing of reference**

41.—(1) The Registrar may adjourn the hearing of a reference from time to time as he thinks fit.

(2) At or before the hearing of a reference, the Registrar may give a direction limiting the witnesses who may be called, whether expert witnesses or not, but any such direction may, on sufficient cause being shown, be revoked or varied by a subsequent direction given at or before the hearing.

(3) Subject to paragraph (2), evidence may be given orally or by affidavit or in such other manner as may be agreed upon.

(4) When the hearing of the reference has been concluded, the Registrar shall—

- (a) reduce in writing his decision on the questions arising in the reference (including any order as to costs) and cause it to be filed;
- (b) cause to be filed either with his decision or subsequently such statement (if any) on the grounds of the decision as he thinks fit; and
- (c) send to the parties to the reference notice that he has done so.

(5) Where no statement of the grounds of the Registrar's decision is filed with his decision and no intimation has been given by the Registrar that he intends to file such a statement later, any party to the reference may, within 14 days after the filing of the decision, make a written request to the Registrar to file such a statement.

[E.r. 42]

### **Objection to decision on reference**

42.—(1) Any party to a reference to the Registrar may, by motion in objection, apply to a judge in court to set aside or vary the decision of the Registrar on the reference, but notice of the motion, specifying the points of objection to the decision, must be filed within 14 days after the date on which notice of the filing of the decision was sent to that party under rule 41(4) or, if a notice of the filing of a statement of the grounds of the decision was subsequently sent to him thereunder, within 14 days after the date on which that notice was sent.

(2) The decision of the Registrar shall be deemed to be given on the date on which it is filed, but, unless he or the judge otherwise directs, the decision shall not be acted upon until the time has elapsed for filing notice of a motion in objection thereto, or while such a motion is pending or remains undisposed of.

(3) A direction shall not be given under paragraph (2) without the parties being given an opportunity of being heard, but may, if the Registrar announces his intended decision at the conclusion of the hearing of the reference, be incorporated in his decision as reduced to writing under rule 41(4).

[E.r. 43]

### **Drawing up and entry of judgments and orders**

43. Every judgment given or order made in an Admiralty cause or matter shall be drawn up in the Central Office and shall be entered by an officer of the Central Office in the book kept for the purpose.

[E.r. 45]

## **ORDER 76**

### **CONTENTIOUS PROBATE PROCEEDINGS**

#### **Application and interpretation**

1.—(1) This Order applies to probate causes and matters, and the other provisions of these Rules apply to those causes and matters subject to the provisions of this Order.

(2) In these Rules “probate action” means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business.

(3) In this Order—

“the Order” means the Administration of Estates (Northern Ireland) Order 1979(87);

“the Office”, means the Probate and Matrimonial Office;

“will” includes a codicil.

[E.r. 1]

#### **Requirements in connection with issue of writ**

2.—(1) A probate action must be begun by writ, issued out of the Office.

(2) Before a writ beginning a probate action is issued it must be indorsed with—

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(87) S.I. 1979 No. 1575 (N.I. 14)

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- (a) a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates; and
- (b) a memorandum signed by the Master showing that the writ has been produced to him for examination.

[E.r. 2]

#### **Parties to action for revocation of grant**

3. Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of his will or letters of administration of his estate shall be made a party to any action for revocation of the grant.

[E.r. 3]

#### **Lodgment of grant in action for revocation**

4.—(1) Where, at the commencement of an action for the revocation of a grant of probate of the will or letters of administration of the estate of a deceased person, the probate or letters of administration as the case may be, have not been lodged in the Office, then—

- (a) if the action is commenced by a person to whom the grant was made, he shall lodge the probate or letters of administration in the Office within 7 days after the issue of the writ;
- (b) if any defendant to the action has the probate or letters of administration in his possession or under his control he shall lodge it or them in the Office within 14 days after the service of the writ upon him.

(2) Any person who fails to comply with paragraph (1) may, on the application of any party to the action, be ordered by the Court to lodge the probate or letters of administration in the Office within a specified time; and any person against whom such an order is made shall not be entitled to take any step in the action without the leave of the Court until he has complied with the order.

[E.r. 4]

#### **Affidavit of testamentary scripts**

5.—(1) Unless the Court otherwise directs, the plaintiff and every defendant who has entered an appearance in a probate action must swear an affidavit—

- (a) describing any testamentary scripts of the deceased person whose estate is the subject of the action of which he has any knowledge or, if such be the case, stating that he knows of no such script, and
- (b) if any such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name or address of that person.

(2) Any affidavit required by this rule (together with any testamentary script referred to therein which is in the possession or under the control of the deponent) must be filed in the Office within 14 days after the entry of appearance by a defendant to the action or, if no defendant enters an appearance therein and the Court does not otherwise direct, before the plaintiff sets down the action.

(3) Where any testamentary script required by this rule to be filed or any part thereof is written in pencil, then, unless the Court otherwise directs, a facsimile copy of that script, or of the page or pages thereof containing the part written in pencil, must also be filed and the words which appear in pencil in the original must be underlined in red ink in the copy.

(4) Except with the leave of the Court, a party to a probate action shall not be allowed to inspect an affidavit filed, or any testamentary script filed by any other party to the action under this rule,



unless and until an affidavit sworn by him containing the information referred to in paragraph (1) has been filed.

(5) In this rule “testamentary script” means a will or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

[E.r. 5]

### **Default of appearance**

6.—(1) Order 13 shall not apply in relation to a probate action.

(2) Where any of several defendants to a probate action fails to enter an appearance, the plaintiff upon filing an affidavit proving due service of the writ, or notice of the writ, on that defendant may, after the time limited for appearing, proceed with the action as if that defendant had entered an appearance.

(3) Where the defendant, or all the defendants, to a probate action, fails or (ail to enter an appearance, then, unless on the application of the plaintiff the Court orders the action to be discontinued, the plaintiff may after the time limited for appearing by the defendant set down the action for trial.

(4) Before setting down the action for trial the plaintiff must file an affidavit proving due service of the writ, or notice of the writ, on the defendant and, if no statement of claim is indorsed on the writ, he must lodge a statement of claim in the Office.

[E.r. 6]

### **Service of statement of claim**

7. The plaintiff in a probate action must, unless the Court gives leave to the contrary or unless a statement of claim is indorsed on the writ, serve a statement of claim on every defendant who enters an appearance in the action and must do so before the expiration of 6 weeks after entry of appearance by that defendant or of 8 days after the filing by that defendant of an affidavit under rule 5, whichever is the later.

[E.r. 7]

### **Counterclaim**

8.—(1) Notwithstanding anything in Order 15, rule 2(1), a defendant to a probate action who alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person which is the subject of the action must add to his defence a counterclaim in respect of that matter.

(2) If the plaintiff fails to serve a statement of claim, any such defendant may, with the leave of the Court, serve a counterclaim and the action shall then proceed as if the counterclaim were the statement of claim.

[E.r. 8]

### **Contents of pleadings**

9.—(1) Where the plaintiff in a probate action disputes the interest of a defendant he must allege in his statement of claim that he denies the interest of that defendant.

(2) In a probate action in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in his

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pleading that if the allegations made therein are proved he would be entitled to an interest in the estate.

[E.r. 9]

### **Default of pleadings**

10.—(1) Order 19 shall not apply in relation to a probate action.

(2) Where any party to a probate action fails to serve on any other party a pleading which he is required by these Rules to serve on that other party, then, unless the Court orders the action to be discontinued or dismissed, that other party may, after the expiration of the period fixed by or under these rules for service of the pleading in question, set down the action for trial.

[E.r. 10]

### **Discontinuance and dismissal**

11.—(1) Order 21 shall not apply in relation to a probate action.

(2) At any stage of the proceedings in a probate action the Court may, on the application of the plaintiff or of any party to the action who has entered an appearance therein, order the action to be discontinued or dismissed on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate of the will or letters of administration of the estate, of the deceased person, as the case may be, which is the subject of the action, be made to the person entitled thereto.

(3) An application for an order under this rule may be made by summons.

[E.r. 11]

### **Compromise of action: trial on affidavit evidence**

12. Where, whether before or after the service of the defence in a probate action, the parties to the action agree to a compromise, the Court may order the trial of the action on affidavit evidence.

[E.r. 12]

### **Application for order to bring in will, etc.**

13.—(1) Any application in a probate action under Article 15 of the Order for—

- (a) an order requiring a person to bring a will or other testamentary paper into the Office shall be made by summons in the action, which must be served on the person against whom the order is sought;
- (b) the issue of a subpoena requiring a person to bring into the Office a will or other testamentary paper may be made to the Master ex parte and must be supported by an affidavit setting out the grounds of the application.

(2) Any person against whom a subpoena is issued under the said Article 15, and who denies that the will or other testamentary paper referred to in the subpoena is in his possession or under his control may file an affidavit to that effect.

[E.r. 14]

### **Administration pendente lite**

14.—(1) An application under Article 6 of the Order for an order for the grant of administration may be made by summons.

(2) Where an order for a grant of administration is made under the said Article 6, Order 30, rules 2, 4 and 6 and (subject to paragraph (3) of the said Article) rule 3, shall apply as if the administrator were a receiver appointed by the court.

[E.r. 15]

### **Probate counterclaim in other proceedings**

15.—(1) In this rule “probate counterclaim” means a counterclaim in any action other than a probate action by which the defendant claims any such relief as is mentioned in rule 1(2).

(2) Subject to the following paragraphs, this Order shall apply with the necessary modifications to a probate counterclaim as it applies to a probate action.

(3) A probate counterclaim must contain a statement of the nature of the interest of the defendant and of the plaintiff in the estate of the deceased to which the counterclaim relates.

(4) Before it is served a probate counterclaim must be indorsed with a memorandum signed by the Master showing that the counterclaim has been produced to him for examination.

(5) Unless an application under Order 15, rule 5(2), is made within 7 days after the service of a probate counterclaim for the counterclaim to be struck out and the application is granted, the Court shall, if necessary of its own motion, order the transfer of the action to the Family Division.

[E.r. 16]

## **ORDER 77**

### **PROCEEDINGS BY AND AGAINST THE CROWN**

#### **Application and interpretation**

1.—(1) These rules apply to civil proceedings to which the Crown is a party subject to the following rules of this Order.

(2) In this Order—

“the Act” means the Crown Proceedings Act 1947<sup>(88)</sup> as it applies in Northern Ireland in relation to Her Majesty's Government in the United Kingdom and in relation to Her Majesty's Government in Northern Ireland;

“civil proceedings by the Crown”, “civil proceedings against the Crown” and “civil proceedings by or against the Crown” have the same respective meanings as in Part II of the Act and do not include any of the proceedings specified in section 23(3) of that Act;

“civil proceedings to which the Crown is a party” has the same meaning as it has for the purposes of Part IV of the Act, by virtue of section 38(4) of that Act;

“order against the Crown” means any order (including an order for costs) made in any civil proceedings by or against the Crown or in any proceedings on the Crown side of the Queen's Bench Division, or in connection with any arbitration to which the Crown is a party, in favour of any person against the Crown or against a government department or against an officer of the Crown as such;

“order” includes a judgment, decree, rule, award or declaration.

[E.r. 1]

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(88) 1947 c. 44

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### **Particulars to be included in indorsement of claim**

2.—(1) In the case of a writ which begins civil proceedings against the Crown the indorsement of claim required by Order 6, rule 2, shall include a statement of the circumstances in which the Crown's liability is alleged to have arisen and as to the government department and officers of the Crown concerned.

(2) If in civil proceedings against the Crown a defendant considers that the writ does not contain a sufficient statement as required by this rule, he may, before the expiration of the time limited for appearing, apply to the plaintiff by notice for a further and better statement containing such information as may be specified in the notice.

(3) Where a defendant gives a notice under this rule, the time limited for appearing shall not expire until 7 days after the defendant has notified the plaintiff in writing that the defendant is satisfied with the statement supplied in compliance with the notice or 7 days after the Court has, on the application of the plaintiff by summons served on the defendant not less than 7 days before the return day, decided that no further information as to the matters referred to in paragraph (1) is reasonably required.

[E.r. 3]

### **Service on the Crown**

3.—(1) Order 10, Order 11 and any other provision of these Rules relating to service out of the jurisdiction shall not apply in relation to the service of any process by which civil proceedings against the Crown are begun.

(2) Personal service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings is not requisite; but where the proceedings are by or against the Crown service on the Crown must be effected—

- (a) by leaving the document at the office of the person who is in accordance with section 18 of the Act to be served, or of any agent whom that person has nominated for the purpose, but in either case with a member of the staff of that person or agent, or
- (b) by posting it in a prepaid envelope addressed to the person who is to be served as aforesaid or to any such agent as aforesaid.

(3) In relation to the service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown, Order 65, rules 5 and 9, shall not apply, and Order 65, rule 7, shall apply as if the reference therein to rules 2 and 5(1)(a) of that Order were a reference to paragraph (2)(a) of this rule.

[E.r. 4]

### **Counterclaim and set-off**

4.—(1) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, a person may not in any proceedings by the Crown make any counterclaim or plead a set-off if the proceedings are for the recovery of, or the counterclaim or set-off arises out of a right or claim to repayment in respect of, any taxes, duties or penalties.

(2) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, no counterclaim may be made, or set-off pleaded, without the leave of the Court, by the Crown in proceedings against the Crown, or by any person in proceedings by the Crown—

- (a) if the Crown is sued or sues in the name of a government department and the subject-matter of the counterclaim or set-off does not relate to that department; or
  - (b) if the Crown is sued or sues in the name of the Attorney-General.
- (3) Any application for leave under this rule must be made by summons.

[E.r. 6]

### **Summary judgment**

5.—(1) No application against the Crown shall be made under Order 14, rule 1, or Order 86, rule 1, in any proceedings against the Crown nor under Order 14, rule 5, in any proceedings by the Crown.

(2) Where an application is made by the Crown under Order 14, rule 1, Order 14, rule 5, or Order 86, rule 1, the affidavit required in support of the application must be made by—

- (a) the solicitor acting for the Crown, or
- (b) an officer duly authorised by the solicitor so acting or by the department concerned;

and the affidavit shall be sufficient if it states that in the deponent's belief the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim to which the application relates or no defence except as to the amount of any damages claimed.

[E.r. 7]

### **Summary applications to the Court in certain revenue matters**

6.—(1) This rule applies to applications under section 14 of the Act.

(2) An application to which this rule applies may be made by originating motion or originating summons.

(3) The person from whom any account or information or payment is claimed or by whom any books are required to be produced must be made respondent or, where the application is made by originating summons, defendant to the application.

(4) An originating summons or notice of originating motion under this rule—

- (a) must be entitled in the matter or matters out of which the need for the application arises and in the matter of the Act; and
- (b) must refer to the statutory provision under which the account or information or payment or the production of books is claimed and, where information is claimed, must show (by appropriate questions or otherwise) what information is required.

(5) Upon any application to which this rule applies an affidavit by a duly authorised officer of the government department concerned setting out the state of facts upon which the application is based and stating that he has reason to think that those facts exist shall be evidence of those facts; and if evidence is filed disputing any of those facts, further evidence may be filed, and the Court may either decide the matter upon the affidavits (after any cross-examination that may have been ordered) or may direct that it be decided by oral evidence in court.

(6) An order in favour of the Crown on an application to which this rule applies shall, unless the Court otherwise determines, name a time within which each of its terms is to be complied with.

(7) For the purpose of Order 59, rule 4, all orders made on applications to which this rule applies shall be deemed to be interlocutory.

(8) Nothing in this rule shall, in relation to any case in which the only relief claimed by the Crown is the payment of money, be construed as requiring the Crown to proceed by way of an application to which this rule applies or as preventing the Crown from availing itself of any other procedure which is open to it under these rules.

[E.r. 8]

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### **Joinder of Commissioners of Inland Revenue under Order 15 rule 6(2)(b)(ii)**

7. Nothing in Order 15, rule 6(2)(b)(ii), shall be construed as enabling the Commissioners of Inland Revenue to be added as a party to any cause or matter except with their consent signified in writing or in such manner as may be authorised.

[E.r. 8A]

### **Judgment in default**

8.—(1) Except with the leave of the Court, no judgment in default of appearance or of pleading shall be entered against the Crown in civil proceedings against the Crown or in third party proceedings against the Crown.

(2) Except with the leave of the Court, Order 16, rule 5(1)(a), shall not apply in the case of third party proceedings against the Crown.

(3) An application for leave under this rule may be made by summons or, except in the case of an application relating to Order 16, rule 5, by motion; and the summons or, as the case may be, notice of the motion must be served not less than 7 days before the return day.

[E.r. 9]

### **Third party notices**

9.—(1) Notwithstanding anything in Order 16, a third party notice (including a notice issuable by virtue of Order 16, rule 9) for service on the Crown shall not be issued without the leave of the Court, and the application for the grant of such leave must be made by summons, and the summons must be served on the plaintiff and the Crown.

(2) Leave to issue such a notice for service on the Crown shall not be granted unless the Court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

[E.r. 10]

### **Interpleader: application for order against Crown**

10. No order shall be made against the Crown under Order 17, rule 3(3), except upon an application by summons served not less than 7 days before the return day.

[E.r. 11]

### **Discovery and interrogatories**

11.—(1) Order 24, rules 1 and 2, shall not apply in civil proceedings to which the Crown is a party.

(2) In any civil proceedings to which the Crown is a party any order of the Court made under the powers conferred by section 28(1) of the 1947 Act shall be construed as not requiring the disclosure of the existence of any document the existence of which it would, in the opinion of a Minister of the Crown, be injurious to the public interest to disclose.

(3) Where in any such proceedings an order of the Court directs that a list of documents made in answer to an order for discovery against the Crown shall be verified by affidavit, the affidavit shall be made by such officer of the Crown as the Court may direct.

(4) Where in any such proceedings an order is made under the said section 28 for interrogatories to be answered by the Crown, the Court shall direct by what officer of the Crown the interrogatories are to be answered.

(5) In any proceedings by the Crown for the enforcement of any right or the enforcement of which proceedings by way of English information might have been taken if the Act had not passed the Crown may serve interrogatories or further interrogatories (except any third or subsequent set of interrogatories) under Order 26 without the leave of the Court.

[E.r. 12]

#### **Place of trial**

12.—(1) Civil proceedings by or against the Crown shall not, except with the consent of the Crown, be directed to be tried elsewhere than at the Royal Courts of Justice, Belfast.

(2) Nothing in any of these Rules shall prejudice the right of the Crown to demand a local venue for the trial of any proceedings in which the Attorney General has waived his right to a trial at bar.

[E.r. 13]

#### **Evidence**

13.—(1) Civil proceedings against the Crown may be instituted under Order 39, rule 15; in any case in which the Crown is alleged to have an interest or estate in the honour, title, dignity or office or property in question.

(2) For the avoidance of doubt it is hereby declared that any powers exercisable by the Court in regard to the taking of evidence are exercisable in proceedings by or against the Crown as they are exercisable in proceedings between subjects.

[E.r. 14]

#### **Enforcement and satisfaction of orders**

14.—(1) Nothing in Orders 45 to 52 shall apply in respect of any order against the Crown.

(2) An application under the proviso to subsection (1) of section 25 of the Act for a direction that a separate certificate shall be issued under that subsection with respect to the costs (if any) ordered to be paid to the applicant, may be made to the Court ex parte without summons.

[E.r. 15]

#### **Attachment of debts, etc.**

15. Every application to the Court for an order under section 27(1) of the Act restraining any person from receiving money payable to him by the Crown and directing payment of the money to the applicant or some other person must be made by summons served at least 4 days before the return day on the Crown and, unless the Court otherwise orders, on the person to be restrained or his solicitor; and the application must be supported by an affidavit setting out the facts giving rise to it, and in particular identifying the particular debt from the Crown in respect of which it is made.

[E.r. 16]

#### **Proceedings relating to postal packets**

16.—(1) An application by any person under section 9(3) of the Act for leave to bring proceedings in the name of the sender or addressee of a postal packet or his personal representatives must be made by originating summons in the Queen's Bench Division.

(2) The Crown and the person in whose name the applicant seeks to bring proceedings must be made defendants to a summons under this rule.

(3) No appearance need be entered to a summons under this rule.

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[E.r. 17]

### **Applications under ss. 17 and 29 of the Act**

17.—(1) Every application to the Court under section 17(4) of the Act must be made by summons.

(2) An application such as is referred to in section 29(2) of the Act may be made to the Court at any time before trial by motion or summons, or may be made at the trial of the proceedings.

[E.r. 18]

## **ORDER 78**

### **REMITTAL AND REMOVAL OF PROCEEDINGS**

#### **Interpretation and assignment of proceedings**

1.—(1) In this Order :—

“remittal” means remittal from the High Court to a county court under section 31 of the Act;

“removal” means removal from a county court to the High Court, under section 31 of the Act.

(2) Where proceedings commenced in a county court by equity civil bill are removed to the High Court they shall be assigned to the Chancery Division.

#### **Remittal and removal of proceedings**

2.—(1) Any party may apply for the remittal or removal of any civil proceedings by summons to be served on every other party to the proceedings.

(2) The following particulars must be endorsed on the back of the summons :—

(a) in an application for the remittal of proceedings, the county court, or courts if more than one, in which the proceedings could apart from any limitation by reason of amount or value or annual value have been commenced;

(b) in an application for the remittal of proceedings, the county court to which it is proposed by the applicant, or has been agreed by the parties, that the proceedings should be remitted;

(c) in an application for the removal of proceedings, the county court in which the proceedings are pending;

(d) which, if any, parties concur in the application and to what extent;

(e) where the whole of the proceedings are not to be remitted or removed the part to which the application relates;

(f) the nature of the proceedings;

(g) the stage which has been reached in the proceedings; and

(h) the grounds on which the order is sought.

(3) The said summons shall be supported by an affidavit verifying the particulars endorsed on the summons and stating any other facts grounding the application.

#### **Remittal and removal on consent**

3. Where all parties consent to the remittal or removal of any proceedings any party may apply ex parte on a consent executed by the parties or their solicitors setting forth :—



- (a) the county court to or from which it has been agreed that the proceedings should be remitted or removed;
- (b) where the whole of the proceedings are not to be remitted or removed the part to which the consent relates;
- (c) the nature of the proceedings; and
- (d) the terms of any order as to costs which has been agreed upon.

### **Opposing an application for remittal or removal**

4. A party opposing the remittal or removal of any proceedings may show by affidavit or, with the leave of the Court, by oral evidence, that the proceedings or any part thereof ought not to be remitted or removed, as the case may be.

### **Reports of experts**

5. For the purpose of making or opposing any application under this Order a party may exhibit or adduce in evidence the reports of medical or other experts.

### **Service of affidavits and exhibits**

6. Every party shall serve on every other party to the proceedings a copy of every affidavit and exhibit intended to be used on the hearing of any application under this Order.

### **Directions**

7. An order for the removal of any proceedings may include such directions as to the further conduct of the proceedings as may be necessary and may direct that the action be set down for trial forthwith, with or without further pleadings.

### **Procedure on remittal**

8. Where an order is made for the remittal of any proceedings, the proper officer shall :—
- (a) give notice of the remittal to every party to the proceedings and to the Accountant General;
  - (b) send a copy of the order of remittal and the original documents other than the affidavit referred to in rule 2(3) to the principal clerk for the court to which the proceedings are to be remitted;
  - (c) upon receipt of the notice of remittal the Accountant General shall thereupon transfer to the county court to which the proceedings are to be remitted any sum of money paid into court under Order 22 in satisfaction of a claim or cause of action.

### **Procedure on removal**

9.—(1) Where an order is made for the removal of any proceedings the proper officer shall send a copy of the order of removal to the chief clerk for the court from which the proceedings are to be removed.

(2) On receipt by the proper officer of the documents referred to in Order 22, rule 13, of the County Court Rules (Northern Ireland) 1976<sup>(89)</sup>, that officer must forthwith :—

- (a) file the said documents and make an entry of the filing thereof in the cause book;

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<sup>(89)</sup> S.R. 1976 No. 374

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- (b) give notice to all the parties to the proceedings in the county court that the action is proceeding in the High Court and that the defendant is required to enter an appearance in the action in the appropriate office (naming it).
- (3) The defendant must within 10 days after receipt of the notice referred to in rule 10 enter an appearance in accordance with Order 12, rules 1 to 4, and Order 12, rules 1, 2 and 4 shall apply as if the proceedings removed were an action begun by writ.
- (4) The memorandum of appearance in an action begun in the county court and removed to the High Court shall be in Form No. 13 in Appendix A.
- (5) The proceedings shall thereupon, subject to rules 7 and 10, continue as if they had been commenced in the court to which they have been removed.
- (6) If the defendant, or any defendant (if more than one), fails to enter an appearance within the period prescribed by paragraph (3), the plaintiff may, with the leave of the court, enter judgment against the defendant or defendants, as the case may be, with costs.

**Procedure on counterclaim**

10.—(1) Where only the proceedings on a counterclaim are remitted or removed this Order shall apply as if the party setting up the counterclaim were the plaintiff and the party resisting it were the defendant, and references in this Order to the plaintiff and the defendant shall be construed accordingly.

(2) References in this Order to the plaintiff and the defendant shall, where the context so requires, be construed as references to the applicant and the respondent respectively.

**ORDER 79**

[No Order made]

**ORDER 80**

**DISABILITY**

**Interpretation**

1. In this Order—

“patient” means a person suffering or appearing to be suffering from mental disorder as defined in section 7 of the Mental Health Act (Northern Ireland) 1961(90);

“person under disability” means a person who is a minor or a person who by reason of mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961 is incapable of managing or administering his property and affairs.

[E.r. 1]

**Person under disability must sue, etc. by next friend or guardian, ad litem**

2.—(1) A person under disability may not bring, or make a claim in, any proceedings except by his next friend and may not defend, make a counterclaim or intervene in any proceedings, or appear in any proceedings under a judgment or order notice of which has been served on him, except by his guardian ad litem.

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(90) 1961 c. 15 (N.I.)

(2) Subject to the provision of these Rules, anything which in the ordinary conduct of any proceedings is required or authorised by a provision of these Rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian ad litem.

(3) A next friend or guardian ad litem of a person under disability must act by a solicitor.

[E.r. 2]

### **Appointment of next friend or guardian ad litem**

3.—(1) Except as provided by paragraph (3) or (4) or by rule 4, an order appointing a person next friend or guardian ad litem of a person under disability is not necessary.

(2) Where a person is authorised under the Lunacy Regulation (Ireland) Act 1871(91) to conduct legal proceedings in the name of a patient or on his behalf, that person shall be entitled to be next friend or guardian ad litem, as the case may be, of the patient in any proceedings to which his authority extends unless, in a case to which paragraph (3) or (4) or rule 4 applies, some other person is appointed by the Court under that paragraph or rule to be next friend or guardian ad litem, as the case may be; of the patient in those proceedings.

(3) Where a person has been or is next friend or guardian ad litem of a person under disability in any proceedings, no other person shall be entitled to act as such friend or guardian, as the case may be, of the person under disability in those proceedings unless the Court makes an order appointing him such friend or guardian in substitution for the person previously acting in that capacity.

(4) Where, after any proceedings have been begun, a party to the proceedings becomes a patient, an application must be made to the Court for the appointment of a person to be next friend or guardian ad litem, as the case may be, of that party.

(5) Except where the next friend or guardian ad litem, as the case may be, of a person under disability has been appointed by the Court—

- (a) the name of any person shall not be used in a cause or matter as next friend of a person under disability,
- (b) an appearance shall not be entered in a cause or matter for a person under disability, and
- (c) a person under disability shall not be entitled to appear by his guardian ad litem on the hearing of a petition, summons or motion which, or notice of which, has been served on him,

unless and until the documents listed in paragraph (6) have been filed in the appropriate office.

(6) The documents referred to in paragraph (5) are the following—

- (a) a written consent to be next friend or guardian ad litem, as the case may be, of the person under disability in the cause or matter in question given by the person proposing to be such friend or guardian;
- (b) where the person proposing to be such friend or guardian of the person under disability, being a patient, is authorised to conduct the proceedings in the cause or matter in question in the name of the patient or on his behalf, an office copy, sealed with the official seal of the Office of Care and Protection, of the order or other authorisation made or given under the Lunacy Regulation (Ireland) Act 1871 by virtue of which he is so authorised; and
- (c) except where the person proposing to be such friend or guardian of the person under disability, being a patient, is authorised as mentioned in sub-paragraph (b), a certificate made by the solicitor for the person under disability certifying—

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- (i) that he knows or believes, as the case may be, that the person to whom the certificate relates is a minor or a patient, giving (in the case of a patient) the grounds of his knowledge or belief; and
- (ii) where the person under disability is a patient, that there is no person authorised as aforesaid; and
- (iii) except where the person named in the certificate as next friend or guardian ad litem, as the case may be, is the Official Solicitor, that the person so named has no interest in the cause or matter in question adverse to that of the person under disability.

[E.r. 3]

### **Appointment of guardian where person under disability does not appear**

4.—(1) Where—

- (a) in an action against a person under disability begun by writ, or by originating summons to which an appearance is required to be entered, no appearance is entered in the action for that person, or
- (b) the defendant to an action serves a defence and counterclaim on a person under disability who is not already a party to the action; and no appearance is entered for that person,

an application for the appointment by the Court of a guardian ad litem of that person must be made by the plaintiff or defendant, as the case may be, after the time limited (as respects that person) for appearing and before proceeding further with the action or counterclaim.

(2) Where a party to an action has served on a person under disability who is not already a party to the action a third party notice within the meaning of Order 16 and no appearance is entered for that person to the notice, an application for the appointment by the Court of a guardian ad litem of that person must be made by that party after the time limited (as respects that person) for appearing and before proceeding further with the third party proceedings.

(3) Where in any proceedings against a person under disability begun by petition or originating motion, or by originating summons to which no appearance need be entered, that person does not appear by a guardian ad litem at the hearing of the petition, motion or summons, as the case may be, the Court hearing it may appoint a guardian ad litem of that person in the proceedings or direct that an application be made by the petitioner or applicant, as the case may be, for the appointment of such a guardian.

(4) At any stage in the proceedings in the Chancery Division under any judgment or order, notice of which has been served on a person under disability, the Court may, if no appearance is entered for that person, appoint a guardian ad litem of that person in the proceedings or direct that an application be made for the appointment of such a guardian.

(5) An application under paragraph (1) or (2) must be supported by evidence proving—

- (a) that the person to whom the application relates is a person under disability,
- (b) that the person proposed as guardian ad litem is willing and a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability,
- (c) that the writ, originating summons, defence and counterclaim or third party notice, as the case may be, was duly served on the person under disability, and
- (d) subject to paragraph (6), that notice of the application was, after the expiration of the time limited for appearing and at least 7 days before the day named in the notice for hearing of the application, so served on him.

(6) If the Court so directs, notice of an application under paragraph (1) or (2) need not be served on a person under disability.

(7) An application for the appointment of a guardian ad litem made in compliance with a direction of the Court given under paragraph (3) or (4) must be supported by evidence proving the matters referred to in paragraph (5)(b).

[E.r. 6]

#### **Application to discharge or vary certain orders**

5. An application to the Court on behalf of a person under disability served with an order made ex parte under Order 15, rule 7, for the discharge or variation of the order must be made—

- (a) if a next friend or guardian ad litem is acting for that person in the cause or matter in which the order is made within 14 days after the service of the order on that person;
- (b) if there is no next friend or guardian ad litem acting for that person in that cause or matter, within 14 days after the appointment of such a friend or guardian to act for him.

[E.r. 7]

#### **Admission not to be implied from pleading of person under disability**

6. Notwithstanding anything in Order 18, rule 13(1), a person under disability shall not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that he has not traversed it in his pleadings.

[E.r. 8]

#### **Discovery and interrogatories**

7. Orders 24 and 26 shall apply to a person under disability and to his next friend or guardian ad litem.

[E.r. 9]

#### **Compromise, etc., by person under disability**

8. Where in any proceedings money is claimed by or on behalf of a person under disability, no settlement, compromise or payment and no acceptance of money paid into court, whenever entered into or made, shall so far as it relates to that person's claim be valid without the approval of the Court.

[E.r. 10]

#### **Approval of settlement**

9.—(1) Where, before proceedings in which a claim for money is made by or on behalf of a person under disability (whether alone or in conjunction with any other person) are begun, an agreement is reached for the settlement of the claim, and it is desired to obtain the Court's approval to the settlement, then, notwithstanding anything in Order 5, rule 2, the claim may be made in proceedings begun by originating summons, and in the summons an application may also be made for—

- (a) the approval of the Court to the settlement and such orders or directions as may be necessary to give effect to it or as may be necessary or expedient under Article 21 of the County Courts (Northern Ireland) Order 1980(92), or rule 10, or
- (b) alternatively; directions as to the further prosecution of the claim.

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(2) Where in proceedings under this rule a claim is made under the Fatal Accidents Order (Northern Ireland) 1977<sup>(93)</sup>, the originating summons must include the particulars mentioned in Article 4 of the Order.

(3) No appearance need be entered to an originating summons under this rule.

(4) In this rule “settlement” includes a compromise.

[E.r. 11]

### **Control of money recovered by person under disability**

10.—(1) Where in any proceedings—

(a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability, or

(b) money paid into court is accepted by or on behalf of a plaintiff who is a person under disability,

the money shall be dealt with in accordance with directions given by the Court, whether under Article 21 of the County Courts (Northern Ireland) Order 1980 or this rule, or under both that Article and this rule and not otherwise.

(2) Directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into the High Court and invested or otherwise dealt with there.

(3) Without prejudice to the foregoing provisions of this rule, directions given under this rule may include any general or special direction that the Court thinks fit to give and, in particular, directions as to how the money is to be applied or dealt with and as to any payment to be made, either directly or out of the amount paid into court and whether before or after the money is transferred to or paid into a county court, to the plaintiff, or to the next friend in respect of moneys paid or expenses incurred for or on behalf or for the benefit of the person under disability or for his maintenance or otherwise for his benefit or to the plaintiff's solicitor in respect of costs.

(4) Where in pursuance of directions given under this rule money is paid into the High Court, to be invested or otherwise dealt with there, the money (including any interest thereon) shall not be paid out, nor shall any securities in which the money is invested, or the dividends thereon, be sold, transferred or paid out of court, except in accordance with an order of the Court.

(5) The foregoing provisions of this rule shall apply in relation to a counterclaim by or on behalf of a person under disability, and a claim made by or on behalf of such a person in an action by any other person for relief under section 504 of the Merchant Shipping Act 1894<sup>(94)</sup>, as if for references to a plaintiff and a next friend there were substituted references to a defendant and to a guardian ad litem respectively.

[E.r. 12]

### **Provision supplementary to rule 10**

11.—(1) Where under Article 21 of the County Courts (Northern Ireland) Order 1980 money to which a person under disability is entitled is ordered to be transferred from the High Court to a county court or to be paid into a county court, the following provisions of this rule apply.

(2) Where the money is ordered to be transferred to a county court, the proper officer of the High Court shall send a sealed copy of the order and the payment schedule to the Accountant General, who shall proceed in accordance with rule 50 of the Court Funds Rules (Northern Ireland) 1979<sup>(95)</sup>.

<sup>(93)</sup> S.I. 1977 No. 1251 (N.I. 18)

<sup>(94)</sup> 1894 c. 60

<sup>(95)</sup> S.R. 1979 No. 105

(3) Where the money is ordered to be paid into a county court, the proper officer of the High Court shall send a sealed copy of the judgment or order to the chief clerk of the county court.

[E.r. 13]

#### **Proceedings under Fatal Accidents Order: apportionment by court**

12.—(1) Where a single sum of money is paid into court under Order 22, rule 1, in satisfaction of causes of action arising under the Fatal Accidents Order (Northern Ireland) 1977 and the Law Reform (Miscellaneous Provisions) Act 1937(96), and that sum is accepted, the money shall be apportioned between the different causes of action by the Court either when giving directions for dealing with it under rule 10 (if that rule applies) or when authorising its payment out of court.

(2) Where, in an action in which a claim under the Fatal Accidents Order (Northern Ireland) 1977 is made by or on behalf of more than one person, a sum in respect of damages is adjudged or ordered or agreed to be paid in satisfaction of the claim, or a sum of money paid into court under Order 22, rule 1, is accepted in satisfaction of the cause of action under the said Order, then, unless the sum has been apportioned between the persons entitled thereto by the jury, it shall be apportioned between those persons by the Court.

The reference in this paragraph to a sum of money paid into court shall be construed as including a reference to part of a sum so paid, being the part apportioned by the Court under paragraph (1) to the cause of action under the said Order.

[E.r. 15]

#### **Service of certain documents on person under disability**

13.—(1) Where in any proceedings a document is required to be served personally or in accordance with Order 10, rule 1(2) on any person and that person is a person under disability this rule shall apply.

(2) Subject to the following provisions of this rule and to Order 24, rule 15(3), and Order 26, rule 6(3), the document must be served—

- (a) in the case of a minor who is not also a patient, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;
- (b) in the case of a patient, on the person (if any) who is authorised to conduct in the name of the patient or on his behalf the proceedings in connection with which the document is to be served or, if there is no person so authorised, on the person with whom he resides or in whose care he is;

and must be served in the manner required by these Rules with respect to the document in question.

(3) Notwithstanding anything in paragraph (2), the Court may order that a document which has been, or is to be, served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability;

(4) A judgment or order requiring a person to do, or refrain from doing, any act, a notice of motion or summons for the committal of any person, and a writ of subpoena against any person, must, if that person is a person under disability, be served personally on him unless the Court otherwise orders.

This paragraph shall not apply to an order for interrogatories or for discovery or inspection of documents.

[E.r. 16]

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## ORDER 81

### PARTNERS

#### **Actions by and against firms within jurisdiction**

1. Subject to the provisions of any statutory provision, any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within the jurisdiction may sue, or be sued, in the name of the firm (if any) of which they were partners at the time when the cause of action accrued.

[E.r. 1]

#### **Disclosure of partners' names**

2.—(1) Any defendant to an action brought by partners in the name of a firm may serve on the plaintiffs or their solicitor a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with the Court may order the plaintiffs or their solicitor to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that further proceedings in the action be stayed on such terms as the Court may direct.

(2) When the names of the partners have been declared in compliance with a notice or order given or made under paragraph (1), the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as plaintiffs in the writ.

(3) Paragraph (1) shall have effect in relation to an action brought against partners in the name of a firm as it has effect in relation to an action brought by partners in the name of a firm but with the substitution, for references to the defendant and the plaintiffs, of references to the plaintiff and the defendants respectively, and with the omission of the words “or may order” to the end.

[E.r. 2]

#### **Service of writ**

3.—(1) Where by virtue of rule 1 partners are sued in the name of a firm, the writ may, except in the case mentioned in paragraph (2), be served—

- (a) on any one or more of the partners, or
- (b) at the principal place of business of the partnership within the jurisdiction, on any person having at the time of service the control or management of the partnership business there; or
- (c) by sending a copy of the writ by ordinary first class post (as, defined in Order 10, rule 1(2)) to the firm at the principal place of business of the partnership within the jurisdiction;

and, subject to paragraph (2), where service of the writ is effected in accordance with this paragraph, the writ shall be deemed to have been duly served on the firm, whether or not any member of the firm is out of the jurisdiction.

(2) Where a writ is served on a firm in accordance with sub-paragraph (1)(c)—

- (a) the date of service shall, unless the contrary is shown, be deemed to be the seventh day (ignoring Order 3, rule 2(5)) after the date on which the copy was sent to the firm; and
- (b) any affidavit proving due service of the writ must contain a statement to the effect that—



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- (i) in the opinion of the deponent the copy of the writ, if sent to the firm at the address in question, will have come to the knowledge of one of the persons mentioned in paragraph (1)(a) or (b) within 7 days thereafter, and
- (ii) the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee.

(3) Where a partnership has, to the knowledge of the plaintiff, been dissolved before an action against the firm is begun, the writ by which the action is begun must be served on every person within the jurisdiction sought to be made liable in the action.

(4) Every person on whom a writ is served under paragraph (1)(a) or (b) must at the time of service be given a written notice stating whether he is served as a partner or as a person having the control or management of the partnership business or both as a partner and as such a person; and any person on whom a writ is so served but to whom no such notice is given shall be deemed to be served as a partner.

[E.r. 3]

#### **Entry of appearance in an action against firm**

4.—(1) Where persons are sued as partners in the name of their firm appearance may not be entered in the name of the firm but only by the partners thereof in their own names, but the action shall nevertheless continue in the name of the firm.

(2) Where in an action against a firm the writ by which the action is begun is served on a person as a partner, that person, if he denies that he was a partner or liable as such at any material time, may enter an appearance in the action and state in his memorandum of appearance that he does so as a person served as a partner in the defendant firm but who denies that he was a partner at any material time.

An appearance entered in accordance with this paragraph shall, unless and until it is set aside, be treated as an appearance for the defendant firm.

(3) Where an appearance has been entered for a defendant in accordance with paragraph (2), then—

- (a) the plaintiff may either apply to the Court to set it aside on the ground that the defendant was a partner or liable as such at a material time or may leave that question to be determined at a later stage of the proceedings;
- (b) the defendant may either apply to the Court to set aside the service of the writ on him on the ground that he was not a partner or liable as such at a material time or may at the proper time serve a defence on the plaintiff denying in respect of the plaintiff's "Claim either his liability as a partner or the liability of the defendant firm or both.

(4) The Court may at any stage of the proceedings in an action in which a defendant has entered an appearance in accordance with paragraph (2), on the application of the plaintiff or of that defendant, order that any question as to the liability of that defendant or as to the liability of the defendant firm be tried in such manner; and at such time as the Court directs.

(5) Where in an action against a firm the writ by which the action is begun is served on a person as a person having the control or management of the partnership business, that person may not enter an appearance in the action unless he is a member of the firm sued.

[E.r. 4]

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### **Leave to enforce judgment against firm**

5.—(1) Where a judgment is given against a firm, leave to enforce the judgment against the property of a partner in the firm may be granted upon the ex parte application of the party who has obtained that judgment against a person who—

- (a) entered an appearance in the action as a partner, or
- (b) having been served as a partner with the writ of summons, failed to enter an appearance in the action, or
- (c) admitted in his pleading that he is a partner, or
- (d) was adjudged to be a partner.

(2) Leave under paragraph (1) shall not be granted against a member of the firm who was out of the jurisdiction when the writ of summons was issued unless he—

- (a) entered an appearance to the action as a partner, or
- (b) was served within the jurisdiction with the writ as a partner, or
- (c) was, with the leave of the Court given under Order 11, served out of the jurisdiction with the writ, or notice of the writ, as a partner;

and, except as against any property of the firm within the jurisdiction or as provided by the foregoing provisions of this paragraph, a judgment given or made against a firm shall not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the writ was issued.

(3) Where a party who has obtained a judgment against a firm claims that a person is liable to satisfy the judgment as being a member of the firm, and the foregoing provisions of this rule do not apply in relation to that person, that party may apply to the Court for leave to enforce the judgment against that person, the application to be made by summons which must be served personally on that person.

(4) Where the person against whom an application under paragraph (3) is made does not dispute his liability, the Court hearing the application may, subject to paragraph (2) give leave to enforce against that person, and, where that person disputes his liability, the Court may order that the liability of that person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

[E.r. 5]

### **Leave to enforce judgment in actions between partners, etc**

6.—(1) Upon an application for leave to enforce a judgment given in—

- (a) an action by or against a firm in the name of the firm against or by a member of the firm, or
- (b) an action by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common

the Court may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

[E.r. 6]

### **Actions begun by originating summons**

7. Rules 2 to 6 shall, with the necessary modifications, apply in relation to an action by or against partners in the name of their firm begun by originating summons as they apply in relation to such an action begun by writ.

[E.r. 8]

### **Application to person carrying on business in another name**

8. An individual carrying on business within the jurisdiction in a name or style other than his own name, may be sued in that name or style as if it were the name of a firm, and rules 2 to 7 shall, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

[E.r. 9]

## **ORDER 82**

### **DEFAMATION ACTIONS**

1. These Rules apply to actions for libel or slander subject to the following rules of this Order.

[E.r. 1]

### **Indorsement of claim in libel action**

2. Before a writ in an action for libel is issued it must be indorsed with a statement giving sufficient particulars of the publications in respect of which the action is brought to enable them to be identified.

[E.r. 2]

### **Obligation to give particulars**

3.—(1) Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in support of such sense.

(2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

(3) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published on a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

(4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.

[E.r. 3]

### **Provision as to payment into court**

4.—(1) Where in an action for libel or slander against several defendants sued jointly the plaintiff, in accordance with Order 22, rule 3(1), accepts money paid into court by any of those defendants in satisfaction of his cause of action against that defendant, then, notwithstanding anything in rule 3(2) of that Order, the action shall be stayed against that defendant only, but—

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- (a) the sum recoverable under any judgment given in the plaintiff's favour against any other defendant in the action by way of damages shall not exceed the amount (if any) by which the amount of the damages exceeds the amount paid into court by the defendant as against whom the action has been stayed, and
- (b) the plaintiff shall not be entitled to his costs of the action against the other defendant after the date of the payment into court unless either the amount of the damages awarded to him is greater than the amount paid into court and accepted by him or the judge is of opinion that there was reasonable ground for him to proceed with the action against the other defendant.

(2) Where in an action for libel a party pleads the defence for which section 2 of the Libel Act 1843(97) provides, Order 22, rule 7, shall not apply in relation to that pleading.

[E.r. 4]

#### **Statement in open court**

5.—(1) Where a party accepts money paid into court in satisfaction of a cause of action for libel or slander, the plaintiff or defendant, as the case may be, may apply to a judge in chambers by summons for leave to make in open court a statement in terms approved by the judge.

(2) Where a party to an action for libel or slander which is settled before trial desires to make a statement in open court, an application must be made to the Court for an order that the action be set down for trial, and before the date fixed for the trial the statement must be submitted for the approval of the judge before whom it is to be made.

[E.r. 5]

#### **Interrogatories not allowed in certain cases**

6. In an action for libel or slander where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief shall be allowed.

[E.r. 6]

#### **Evidence in mitigation of damages**

7. In an action for libel or slander in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled to give evidence in chief, with a view, to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless 7 days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

[E.r. 7]

#### **Fulfilment of offer of amends under s. 4 of Defamation Act (Northern Ireland) 1955**

8.—(1) An application to the Court under section 4 of the Defamation Act (Northern Ireland) 1955(98) to determine any question as to the steps to be taken in fulfilment of an offer of amends made under that section must, unless the application is made in the course of proceedings for libel or

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(97) 1843 c. 96

(98) 1955 c. 11 (N.I.)

slander in respect of the publication to which the offer relates, be made in chambers in the Queen's Bench Division, but only a judge may determine such question.

(2) No appearance need be entered to an originating summons by which such an application is made.

[E.r. 8]

## ORDER 83

### REOPENING OF AGREEMENTS UNDER THE CONSUMER CREDIT ACT 1974

#### **Interpretation**

1. In this Order a section referred to by number means the section so numbered in the Consumer Credit Act 1974(99).

[E.r. 1]

#### **Notice to reopen agreement**

2.—(1) Where in any such proceedings in the High Court as are mentioned in section 139(1)(b) the debtor or a surety desires to have a credit agreement reopened, he shall serve a notice to that effect on every other party to the proceedings and file a copy of the notice.

(2) If at the time of serving a notice under paragraph (1) the debtor or surety has not entered an appearance in the proceedings, the notice must specify an address for service as if it were a memorandum of appearance.

[E.r. 2]

#### **No default judgment without leave**

3.—(1) After a notice under rule 2 has been served in an action begun by writ, judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under paragraph (1) must be made by summons supported by affidavit, and, notwithstanding anything in Order 65, rule 9, the summons and a copy of the affidavit must be served on every other party to the proceedings.

(3) If the application is for leave to enter judgment in default of appearance, the summons shall not be issued until after the time limited for appearing.

[E.r. 3]

#### **Court's powers on hearing of application**

4. On the hearing of an application under rule 3(2) or of any proceedings in which a notice under rule 2 has been filed, the Court may whether or not the debtor or surety has entered an appearance or appears at the hearing, exercise the powers of the Court under sections 137 to 140 and where, on an application under rule 3(2), the Court refuses leave to enter judgment on a claim or any part of a claim, it may make or give any such order or direction as it might have made or given if the application had been made an application under Order 14, rule 1, for judgment on the claim.

[E.r. 4]

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## ORDER 84

[No Order made]

## ORDER 85

### ADMINISTRATION AND SIMILAR ACTIONS

#### **Interpretation**

1. In this Order “administration action” means an action for the administration under the direction of the Court of the estate of a deceased person or for the execution under the direction of the Court of a trust.

[E.r. 1]

#### **Determination of questions, etc., without administration**

2.—(1) An action may be brought for the determination of any question or for any relief which could be determined or granted, as the case may be, in an administration action and a claim need not be made in the action for the administration or execution under the direction of the Court of the estate or trust in connection with which the question arises or the relief is sought.

(2) Without prejudice to the generality of paragraph (1), an action may be brought for the determination of any of the following questions:—

- (a) any question arising in the administration of the estate of a deceased person or in the execution of a trust;
- (b) any question as to the composition of any class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust;
- (c) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.

(3) Without prejudice to the generality of paragraph (1), an action may be brought for any of the following reliefs:—

- (a) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;
- (b) an order requiring the payment into court of money held by a person in his capacity as executor, administrator or trustee;
- (c) an order directing a person to do or abstain from doing a particular act in his capacity as executor, administrator or trustee;
- (d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity as executor, administrator or trustee;
- (e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the Court.

[E.r. 2]

## **Parties**

3.—(1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which an administration action or such an action as is referred to in rule 2 relates must be parties to the action, and where the action is brought by executors, administrators or trustees, any of them who does not consent to being joined as a plaintiff must be made a defendant.

(2) Notwithstanding anything in Order 15, rule 4(2), and without prejudice to the powers of the Court under that Order, all the persons having a beneficial interest in or claim against the estate or having a beneficial interest under the trust, as the case may be, to which such an action as is mentioned in paragraph (1) relates need not be parties to the action; but the plaintiff may make such of those persons, whether all or any one or more of them, parties as, having regard to the nature of the relief or remedy claimed in the action, he thinks fit.

(3) Where, in proceedings under a judgment or order given or made in an action for the administration under the direction of the Court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the action, no party other than the executors or administrators of the estate shall be entitled to appear in any proceedings relating to that claim without the leave of the Court, and the Court may direct or allow any other party to appear either in addition to, or in substitution for, the executors or administrators on such terms as to costs or otherwise as it thinks fit.

[E.r. 3]

## **Grant of relief in action begun by originating summons**

4. In an administration action or such an action as is referred to in rule 2, the Court may make any certificate or order and grant any relief to which the plaintiff may be entitled by reason of any breach of trust, wilful default or other misconduct of the defendant notwithstanding that the action was begun by originating summons, but the foregoing provision is without prejudice to the power of the Court to make an order under Order 28, rule 8, in relation to the action.

[E.r. 4]

## **Judgments and orders in administration actions**

5.—(1) A judgment or order for the administration or execution under the direction of the Court of an estate or trust need not be given or made unless in the opinion of the Court the questions at issue between the parties cannot properly be determined otherwise than under such a judgment or order.

(2) Where an administration action is brought by a creditor of the estate of a deceased person or by a person claiming to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust, and the plaintiff alleges that no or insufficient accounts have been furnished by the executors, administrators or trustees, as the case may be, then, without prejudice to its other powers, the Court may—

- (a) order that proceedings in the action be stayed for a period specified in the order and that the executors, administrators or trustees, as the case may be, shall within that period furnish the plaintiff with proper accounts;
- (b) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled as aforesaid, give judgment or make an order for the administration of the estate to which the action relates and include therein an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed, without the leave of the judge in person.

[E.r. 5]

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### **Conduct of sale of trust property**

6. Where in an administration action an order is made for the sale of any property vested in executors, administrators or trustees, those executors, administrators or trustees, as the case may be, shall have the conduct of the sale unless the Court otherwise directs.

[E.r. 6]

## **ORDER 86**

### **ACTIONS FOR SPECIFIC PERFORMANCE, ETC. : SUMMARY JUDGMENT**

#### **Application by plaintiff for summary judgment**

1.—(1) In any action in the Chancery Division begun by writ indorsed with a claim—

- (a) for specific performance of an agreement (whether in writing or not) for the sale, purchase or exchange of any property, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages, or
- (b) for rescission of such an agreement, or
- (c) for the forfeiture or return of any deposit made under such an agreement,

the plaintiff may, on the ground, that the defendant has no defence to the action, apply to the Court for judgment.

(2) An application may be made against a defendant under this rule whether or not he has entered an appearance in the action.

[E.r. 1]

#### **Manner in which application under rule 1 must be made**

2.—(1) An application under rule 1 shall be made by summons supported by an affidavit verifying the facts on which the cause of action is based and stating that in the deponent's belief there is no defence to the action.

Unless the Court otherwise directs, an affidavit for the purposes of this paragraph may contain statements of information or belief with the sources and grounds thereof.

(2) The summons must set out or have attached thereto minutes of the judgment sought by the plaintiff.

(3) The summons, a copy of the affidavit in support and of any exhibit referred to therein must be served on the defendant not less than 4 clear days before the return day.

[E.r. 2]

#### **Judgment for plaintiff**

3. Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the action, the Court may give judgment for the plaintiff in the action.

[E.r. 4]



### **Leave to defend**

4.—(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.

(2) The Court may give a defendant against whom such an application is made leave to defend the action either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(3) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity—

(a) to produce any document;

(b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

[E.r. 5]

### **Directions**

5. Where the Court orders that a defendant have leave to defend the action, the Court shall give directions as to the further conduct of the action.

[E.r. 6]

### **Costs**

6. If the plaintiff makes an application under rule 1 where the case is not within this Order, or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 62, and, in particular, to rule 4(1) thereof, the Court may dismiss the application with costs and may, if the plaintiff is not an assisted person, require the costs to be paid by him forthwith.

[E.r. 7]

### **Setting aside judgment**

7. Any judgment given against a defendant who does not appear at the hearing of an application under rule 1 may be set aside or varied by the Court on such terms as it thinks just.

[E.r. 8]

## **ORDER 87**

### **DEBENTURE HOLDERS' ACTIONS : RECEIVER'S REGISTER**

#### **Receiver's register**

1. Every receiver appointed by the Court in an action to enforce registered debentures or registered debenture stock shall, if so directed by the Court, keep a register of transfers, of, and other transmissions of title to, such debentures or stock (in this Order referred to as "the receiver's register").

[E.r. 1]

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### **Registration of transfers, etc.**

2.—(1) Where a receiver is required by rule 1 to keep a receiver's register, then, on the application of any person entitled to any debenture or debenture stock by virtue of any transfer or other transmission of title, and on production of such evidence of identity and title as the receiver may reasonably require, the receiver shall, subject to the following provisions of this rule, register the transfer or other transmission of title in that register.

(2) Before registering a transfer the receiver must, unless the due execution of the transfer is proved by affidavit, send by post to the registered holder of the debentures or debenture stock transferred at his registered address a notice stating—

- (a) that an application for the registration of the transfer has been made, and
- (b) that the transfer will be registered unless within the period specified in the notice the holder informs the receiver that he objects to the registration,

and no transfer shall be registered until the period so specified has elapsed.

The period to be specified in the notice shall in no case be less than 7 days after a reply from the registered holder would in the ordinary course of post reach the receiver if the holder had replied to the notice on the day following the day when in the ordinary course of post the notice would have been delivered at the place to which it was addressed.

(3) On registering a transfer or other transmission of title under this rule the receiver must indorse a memorandum thereof on the debenture or certificate of debenture stock, as the case may be, transferred or transmitted, containing a reference to the action and to the order appointing him receiver.

[E.r. 2]

### **Application for rectification of receiver's register**

3.—(1) Any person aggrieved by any thing done or omission made by a receiver under rule 2 may apply to the Court for rectification of the receiver's register, the application to be made by summons in the action in which the receiver was appointed.

(2) The summons shall in the first instance be served only on the plaintiff or other party having the conduct of the action but the Court may direct the summons or notice of the application to be served on any other person appearing to be interested.

(3) The Court hearing an application under this rule may decide any question relating to the title of any person who is party to the application to have his name entered in or Omitted from the receiver's register and generally may decide any question necessary or expedient to be decided for the rectification of that register.

[E.r. 3]

### **Receiver's register evidence of transfers, etc.**

4. Any entry made in the receiver's register, if verified by an affidavit made by the receiver or by such other person as the Court may direct, shall in all proceedings in the action in which the receiver was appointed be evidence of the transfer or transmission of title to which the entry relates and, in particular, shall be accepted as evidence thereof for the purpose of any distribution of assets, notwithstanding that the transfer or transmission has taken place after the making of a certificate in the action certifying the holders of the debentures or debenture stock certificates.

[E.r. 4]

### **Proof of title of holder of bearer debenture, etc.**

5.—(1) This rule applies in relation to an action to enforce bearer debentures or to enforce debenture stock in respect of which the company has issued debenture stock bearer certificates.

(2) Notwithstanding that judgment has been given in the action and that a certificate has been made therein certifying the holders of such debentures or certificates as are referred to in paragraph (1), the title of any person claiming to be such a holder shall (in the absence of notice of any defect in the title) be sufficiently proved by the production of the debenture or debenture stock certificate, as the case may be, together with a certificate of identification signed by the person producing the debenture or certificate identifying the debenture or certificate produced and certifying the person (giving his name and address) who is the holder thereof.

(3) Where such a debenture or certificate as is referred to in paragraph (1) is produced in the Chancery Office, the solicitor of the plaintiff in the action must cause to be indorsed thereon a notice stating—

- (a) that the person whose name and address is specified in the notice (being the person named as the holder of the debenture or certificate in the certificate of identification produced under paragraph (2)) has been recorded in the Chancery Office as the holder of the debenture or debenture stock certificate, as the case may be, and
- (b) that that person will, on producing the debenture or debenture stock certificate, as the case may be, be entitled to receive payment of any dividend in respect of that debenture or stock unless before payment a new holder proves his title in accordance with paragraph (2), and
- (c) that if a new holder neglects to prove his title as aforesaid he may incur additional delay, trouble and expense in obtaining payment.

(4) The solicitor of the plaintiff in the action must preserve any certificates of identification produced under paragraph (2) and must keep a record of the debentures and debenture stock certificates so produced and of the names and addresses of the persons producing them and of the holders thereof, and, if the Court requires it, must verify the record by affidavit.

[E.r. 5]

### **Requirements in connection with payments**

6.—(1) Where in an action to enforce any debentures or debenture stock an order is made for payment in respect of the debentures or stock, the Accountant General shall not make a payment in respect of any such debenture or stock unless either there is produced to him the certificate for which paragraph (2) provides or the Court has in the case in question for special reason dispensed with the need for the certificate and directed payment to be made without it.

(2) For the purpose of obtaining any such payment the debenture or debenture stock certificate must be produced to the solicitor of the plaintiff in the action or to such other person as the Court may direct, and that solicitor or other person must indorse thereon a memorandum of payment and must make and sign a certificate certifying that the statement set out in the certificate has been indorsed on the debenture or debenture stock certificate, as the case may be, and send the certificate to the Accountant General.

[E.r. 6]

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## ORDER 88

### MORTGAGE ACTIONS

#### **Application and interpretation**

1.—(1) This Order applies to any action (whether begun by writ or originating summons) by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being an action in which there is a claim for any of the following reliefs, namely—

- (a) payment of moneys secured by the mortgage,
- (b) sale of the mortgaged property,
- (c) foreclosure,
- (d) delivery of possession to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property,
- (e) redemption,
- (f) reconveyance of the property or its release from the security,
- (g) delivery of possession by the mortgagee.

(2) In this Order “mortgage” includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.

(3) An action to which this Order applies is referred to in this Order as a mortgage action.

(4) These Rules apply to mortgage actions subject to the following provisions of this Order.

[E.r. 1]

#### **Assignment of certain actions to Chancery Division**

2. Without prejudice to Order 1, rule 10, any action in which there is a claim for—

- (a) payment of moneys secured by a mortgage of any real or leasehold property, or
- (b) delivery of possession to the mortgagee of any such property by the mortgagor or by any other person who is or is alleged to be in possession of the property,

shall be assigned to the Chancery Division.

[E.r. 2]

#### **Commencement of action**

3. The writ or originating summons by which a mortgage action is begun shall be indorsed with or contain a statement showing—

- (a) where the mortgaged property is situated, and
- (b) if the plaintiff claims possession of the mortgaged property, whether the property consists of or includes a dwelling house and, if so, whether the dwelling house is one to which the Rent (Northern Ireland) Order, 1978, applies.

[E.r. 3]

### **Documents to be lodged on taking appointment for hearing**

4.—(1) The plaintiff in a mortgage action in the Chancery Division begun by originating summons, on applying for an appointment under Order 28, rule 2(1), must produce the originating summons and leave in the Chancery Office—

- (a) a copy of the originating summons, and
- (b) the copy memorandum of appearance, stamped in accordance with Order 12, rule 4, of any defendant to the action or, if any defendant has failed to enter an appearance, a certificate of his non-appearance.

(2) Not less than 2 clear days before the day fixed for the first or any adjourned hearing of the originating summons the plaintiff must leave in the Chancery Office the original or an office copy of any affidavit intended to be used by him at the hearing with the exhibits thereto.

[E.r. 4]

### **Claim for possession: non-appearance by a defendant**

5.—(1) Where in a mortgage action in the Chancery Division begun by originating summons, being an action in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both, any defendant fails to enter an appearance, the following provisions of this rule shall apply, and references in those provisions to the defendant shall be construed as references to any such defendant.

This rule shall not be taken as affecting Order 28, rule 3, or rule 5(2), in so far as it requires any document to be served on, or notice given to, a defendant who has entered an appearance in the action.

(2) Not less than 4 clear days before the day fixed for the first hearing of the originating summons the plaintiff must serve on the defendant a copy of the notice of appointment for the hearing and a copy of the affidavit in support of the summons.

(3) Where the plaintiff claims delivery of possession there must be indorsed on the outside fold of the copy of the affidavit served on the defendant a notice informing the defendant that the plaintiff intends at the hearing to apply for an order to the defendant to deliver up to the plaintiff possession of the mortgaged property and for such other relief (if any) claimed by the originating summons as the plaintiff intends to apply for at the hearing.

(4) Where the hearing is adjourned, then, subject to any directions given by the Court, the plaintiff must serve notice of the appointment for the adjourned hearing, together with a copy of any further affidavit intended to be used at that hearing, on the defendant not less than 2 clear days before the day fixed for the hearing.

A copy of any affidavit served under this paragraph must be indorsed in accordance with paragraph (3).

(5) Service under paragraph (2) or (4), and the manner in which it was effected, may be proved by a certificate signed by the plaintiff, if he sues in person, and otherwise by his solicitor.

The certificate may be indorsed on the affidavit in support of the summons or, as the case may be, on any further affidavit intended to be used at an adjourned hearing.

(6) A copy of any exhibit to an affidavit need not accompany the copy of the affidavit served under paragraph (2) or (4).

(7) Where the plaintiff gives notice to the defendant under Order 3, rule 6, of his intention to proceed, service of the notice, and the manner in which it was effected, may be, proved by a certificate signed as mentioned in paragraph (5).

[E.r. 5]

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**Action in Chancery Division for possession or payment: evidence**

6.—(1) The affidavit in support of the originating summons by which an action to which this rule applies is begun must comply with the following provisions of this rule.

This rule applies to a mortgage action in the Chancery Division begun by originating summons in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both.

(2) The affidavit must exhibit the original mortgage or a true copy thereof, and the original mortgage or, in the, case of a registered charge, the certificate of charge must be produced at the hearing of the summons.

(3) Where the plaintiff claims delivery of possession the affidavit must show the circumstances under which the right to possession arises and, except where the Court in any case or class of case otherwise directs; the state of the account between the mortgagor and mortgagee with particulars of—

- (a) the amount of the advance,
- (b) the amount of the periodic payments required to be made,
- (c) the amount of any interest or instalments in, arrear at the date of issue of the originating summons and at the date of the affidavit, and
- (d) the amount remaining due under the mortgage.

(4) Where the plaintiff claims delivery of possession, the affidavit must give particulars of every person who to the best of the plaintiff's knowledge is in possession of the mortgaged property.

(5) If the mortgage creates a tenancy other than a tenancy at will between the mortgagor and the mortgagee, the affidavit must show how and when the tenancy was determined and if by service of notice when the notice was duly served.

(6) Where the plaintiff claims payment of moneys secured by the mortgage, the affidavit must prove that the money is due and payable and give the particulars mentioned in paragraph (3).

(7) Where the plaintiff's claim includes a claim for interest to judgment, the affidavit must state the amount of a day's interest.

[E.r. 6]

**Action by writ: judgment in default**

7.—(1) Notwithstanding anything in Order 13 or Order 19; in a mortgage action begun by writ judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under this rule must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the defendant.

(3) Where a summons for leave under this rule is issued in an action in the Chancery Division, rule 5(2) to (7) shall apply in relation to the action subject to the modification that for references therein to the originating summons, and for the reference in paragraph (2) to the notice of appointment there shall be substituted references to the summons.

(4) Where a summons for leave under this rule is issued in an action to which rule 6 would apply had the action been begun by originating summons, the affidavit in support of the summons must contain the information required by that rule.

[E.r. 7]

**Action for sale of mortgaged property : parties: disposal of surplus proceeds of sale: sale of unsold property**

8.—(1) This rule applies to a mortgage action in the Chancery Division in which the plaintiff is a mortgagee and claims sale of the mortgaged property.

(2) Notwithstanding anything in Order 15, rule 4(2), and without prejudice to the powers of the Court under that Order, no other mortgagee or trustee for such mortgagee need be a party to the action unless he is in actual possession or receipt of the rents and profits of the mortgaged property.

(3) A person at whose suit or for whose benefit a receiver has been appointed, or continues to receive the rents and profits of the mortgaged property, shall not be deemed to be in receipt of such rents and profits within the meaning of paragraph (2).

(4) Where mortgaged property has been sold and surplus produce of such sale remains in court after payment of the demands and costs of the plaintiff and prior and contemporaneous mortgages, the Court may order such surplus to be distributed amongst the mortgagees who have proved their demand in the action under an inquiry directed pursuant to paragraph (6), according to their priorities.

(5) Where any part of the mortgaged property the subject of such action remains unsold after payment of the plaintiff's demand, and, prior and contemporaneous mortgages, any mortgagee subsequent in order, of priority to the demand of the plaintiff may apply to the Court for an order directing a sale of such unsold property, or a competent part thereof, for payment of the demands subsequent to that of the plaintiff which have been proved as aforesaid, and the Court may direct such sale if it shall be of opinion that such mortgagees, or any of them, would be entitled to have their demands raised by a sale of such property, or may direct a receiver to be appointed or continued over such unsold property, for the benefit of such subsequent mortgagees, and distribute the funds to be received by such receiver accordingly.

(6) Subject to paragraph (7), an order for sale in a mortgage action shall direct an account to be taken of all mortgages subsequent as well as prior to, or contemporaneous with, the plaintiff's demand, and an inquiry as to the respective priorities of all such demands as shall be proved.

(7) If the Court shall be of opinion that extending the account to mortgages subsequent to the demand of the plaintiff will improperly delay the plaintiff in recovering his demand, the account may be confined to the rights of the plaintiff and of mortgagees prior to and contemporaneous, with him.

## ORDER 89

### CO-ORDINATION OF EXERCISE OF JURISDICTION IN RELATION TO PERSONS UNDER DISABILITY

#### **Application**

1. The rules of this Order shall apply for the purposes of avoiding conflict and of co-ordinating jurisdiction exercised in relation to any person under disability.

#### **Interpretation**

2. In this Order—

“the assigned judge” includes any judge who exercises jurisdiction in a cause or matter assigned to the assigned judge referred to in section 29 of the Act;

“the seised judge” means any judge, including the assigned judge, referred to in section 29 of the Act, who exercises jurisdiction in any other cause or matter;

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the expression “the assigned judge” and “the seised judge” include a master when exercising the corresponding jurisdiction;

“patient” means a person under disability, other than minority, the management of whose affairs is under the control of the Court;

“person under disability” means a person who is a minor or a person who by reason of mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961(100) is incapable of managing and administering his property and affairs.

### **Powers of seised judge**

3.—(1) Where a cause or matter affecting a person under disability is brought before the seised judge or any question affecting such a person arises in a cause or matter so brought, the seised judge may—

- (a) make an order making a minor a ward of court, if he considers it proper to do so, and shall thereupon transfer the matter of the wardship to the assigned judge;
- (b) refer the question of wardship to the assigned judge;
- (c) where a question arising in the proceedings affects the welfare (including the care, custody and control) or property of a person under disability either—
  - (i) refer the question to the assigned judge, or
  - (ii) make such order as he considers necessary to dispose of the question (not being an order which conflicts with an order previously made in wardship proceedings in Northern Ireland affecting a minor).

(2) Any order made under paragraph (1)(c)(ii) may be varied or discharged by the seised judge or the assigned judge.

### **Report by seised judge**

4. The seised judge shall, when he makes an order under rule 3(1), furnish to the Office of Care and Protection for the use of the assigned judge a report on the relevant facts and proceedings together with such observations and recommendations as he thinks fit.

### **Powers of assigned judge**

5. The assigned judge, when a cause or matter is transferred to him or a question is referred to him, may proceed as if it had originated before him.

### **Disability to be indorsed on writ etc.**

6.—(1) Where a person under disability who is a party to or otherwise affected by a cause or matter, other than a wardship application or a matter relating to patients, is a ward of court or a patient; this must be stated in the indorsement of the writ of summons or in the petition, originating summons or originating motion, as the case may be.

(2) Where a person becomes a ward of court or a patient while a cause of matter is pending, the party acting on behalf of that person must amend the proceedings so as to comply with paragraph (1) and give notice of the amendment to any other party.

### **Transmission of order**

7. If the seised judge makes an order—

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(100)1961 c. 15 (N.I.)



- (a) which relates to a person under disability and which brings him within the jurisdiction of the Office of Care and Protection;
- (b) which makes a minor a ward of court;
- (c) which relates to or affects a ward of court or a patient, or
- (d) which the judge directs to be transmitted pursuant to this rule,

a copy of the order shall be transmitted by the department in which the order is drawn up to the Office of Care and Protection.

## ORDER 90

### PROCEEDINGS CONCERNING MINORS

#### **Interpretation**

1. In this Order, “Office” means the Office of Care and Protection, and “the Master” means the Master (Care and Protection).

[E.r. 1]

#### **Assignment and commencement of proceedings**

2. All proceedings to which "this Order relates shall be assigned to the Family Division and shall be begun in the Office.

[E.r. 2]

#### **Application to make minor a ward of court**

3.—(1) An application to make a minor a ward of court must be made by originating summons issued out of the Office.

(2) Where there is no person other than the minor who is a suitable respondent, an application may be made ex parte to the Master for leave to issue either an ex parte originating summons or an originating summons with the minor as respondent thereto; and, except where such leave is granted, the minor shall not be made a respondent to an originating summons under this rule in the first instance.

(3) The date of the minor's birth shall, unless otherwise directed, be stated in the summons and the applicant shall—

- (a) on issuing the summons or before or at the first hearing thereof lodge in the Office a certified copy of the full entry in the Register of Births or, as the case may be, in the Adopted Children Register relating to the minor, or
- (b) at the first hearing of the summons apply for directions as to proof of birth of the minor in some other manner.

(4) Unless the Court otherwise directs, the summons shall state the whereabouts of the minor or, as the case may be, that the applicant is unaware of his whereabouts and shall be served on the respondent, the Director of the Health and Social Services Board for the area in which the minor ordinarily resides (except where the Director is the applicant) and on such other person or persons as the Master may direct.

(5) Every respondent other than the minor shall, forthwith after being served with the summons—

- (a) lodge in the Office a notice stating the address of the respondent and the whereabouts of the minor or, as the case may be, that the respondent is unaware of his whereabouts, and

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(b) unless the Court otherwise directs, serve a copy of the notice on the applicant.

(6) Where any party other than the minor changes his address or becomes aware of any change in the whereabouts of the minor after the issue or, as the case may be, service of the summons, he shall, unless the Court otherwise directs, forthwith lodge notice of the change in the Office and serve a copy of the notice on every other party.

(7) The summons shall contain a notice to the respondent informing him of the requirements of paragraphs (5) and (6).

(8) In this rule any reference to the whereabouts of a minor is a reference to the address at which and the person with whom he is living and any other information relevant to the question where he may be found.

[E.r. 3]

#### **Enforcement of order**

4. The power of the High Court to secure compliance with any direction relating to a ward of court may be exercised by an order addressed to the Official Solicitor or such other person as the judge may nominate.

[E.r. 3]

#### **When minor ceases to be ward of court**

5.—(1) A minor who, by virtue of section 26(2) of the Act, becomes a ward of court on the issue of a summons under rule 3 shall cease to be a ward of court—

(a) if an application for an appointment for the hearing of the summons is not made within the period of 21 days after the issue of the summons, at the expiration of that period;

(b) if an application for such an appointment is made within that period, on the determination of the application made by the summons unless the Court hearing it orders that the minor be made a ward of court;

(2) Nothing in paragraph (1) shall be taken as affecting the power of the Court under section 26(3) of the Act to order that any minor who is for the time being a ward of court shall cease to be a ward of court.

(3) If no application for an appointment for the hearing of a summons under rule 3 is made within the period of 21 days after the issue of the summons, a notice stating whether the applicant intends to proceed with the application made by the summons must be left at the Office immediately after the expiration of that period.

[E.r. 4]

#### **Applications under Guardianship of Infants Act 1886**

6. Where there is pending any proceedings by reason of which a minor is a ward of court, any application under the Guardianship of Infants Act 1886(101) (in this Part of this Order referred to as “the Guardianship Act”) with respect to that minor may be made by summons in that proceeding, but except in that case any such application must be made by originating summons issued out of the Office.

[E.r. 5]

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(101) 1886 c. 27

### **Respondents to guardianship summons**

7.—(1) Where the minor with respect to whom an application under the Guardianship Act is made is not the applicant, he shall not, unless the Court otherwise directs, be made a respondent to the summons or, if the application is made by ordinary summons be served with the summons, but; subject to paragraph (2) any other person appearing to be interested in, or affected by, the application shall be made a respondent or be served with the summons, as the case may be.

(2) The Court may dispense with service of the summons (whether originating or ordinary) on any person and may order it to be served on any person not originally served.

[E.r. 6]

### **Guardianship proceedings may be in chambers**

8. Applications under the Guardianship Act may be disposed of in chambers.

[E.r. 7]

### **Jurisdiction of the Master**

9.—(1) In proceedings to which this Order applies the Master may transact all such business and exercise all such authority and jurisdiction as may be transacted and exercised by a judge in chambers.

(2) Paragraph (1) is without prejudice to the power of the judge to whom the business of the Family Division has been assigned pursuant to section 17 of the Act to reserve to himself the transaction of any such business or the exercise of any such authority or jurisdiction.

[E.r. 12]

## **ORDER 91**

### **REVENUE PROCEEDINGS IN CHANCERY DIVISION**

#### **Assignment to Chancery Division, etc.**

1. The following proceedings, namely—

- (a) any case stated for the opinion of the High Court under section 13 of the Stamp Act 1891~~(102)~~;
- (b) any appeal to the High Court under section 53 or 100 of the Taxes Management Act 1970~~(103)~~ or paragraph 7(3), 32(3) or 35(2) of Schedule 4 to the Finance Act 1975~~(104)~~ or any application, for leave to appeal under the said paragraph 7(3)

shall be assigned to the Chancery Division.

[E.r. 1]

#### **Appeal under paragraph 7 of Schedule 4 to the Finance Act 1975**

2.—(1) Order 55 shall not apply in relation to an appeal to the High Court under paragraph 7(3) of Schedule 4 to the Finance Act 1975.

(2) Such an appeal must be brought by originating summons which must—

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~~(102)~~1891 c. 39

~~(103)~~1970 c. 9

~~(104)~~1975 c. 7

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- (a) state the date on which the Commissioners of Inland Revenue (in this rule referred to as the “Board”) gave notice to the appellant under paragraph 6 of the said Schedule of the determination which is the subject of this appeal;
  - (b) state the date on which the appellant gave to the Board notice of appeal under paragraph 7(1) of the said Schedule and, if the notice was not given within the time limited, whether the Board or the Special Commissioners have given consent to the appeal being brought out of time and, if they have, the date on which it was given, and
  - (c) either state that the appellant and the Board have agreed that the appeal may be to the High Court or contain an application for leave to appeal to the High Court.
- (3) At the time of issuing the originating summons the appellant shall lodge in the Chancery Office—
- (a) two copies of the notice referred to in paragraph (2)(a);
  - (b) two copies of the notice of appeal referred to in paragraph (2)(b); and
  - (c) where the originating summons contains an application for leave to appeal, an affidavit setting out the grounds on which it is alleged that the matters to be decided on the appeal are likely to be substantially confined to questions of law.
- (4) The originating summons must be issued and served on the Board within 30 days of the date on which the appellant gave to the Board notice of appeal under paragraph 7(1) of the said Schedule or, if the Board or the Special Commissioners have given consent to the appeal being brought out of time, within 30 days of the date on which such consent was given.
- (5) No appearance need be entered to the originating summons, but it must specify a date of hearing being not less than 40 days from the issue of the summons.
- (6) Where the originating summons contains an application for leave to appeal to the High Court, a copy of the affidavit lodged pursuant to paragraph (3)(c) shall be served on the Board with the originating summons and the Board may, within 30 days after service, lodge in the Chancery Office an affidavit in answer and a copy of any such affidavit shall be served by the Board on the appellant.
- (7) Except with the leave of the Court, an appellant shall not be entitled on the hearing of an appeal to rely on any grounds of appeal not specified in the notice referred to in paragraph (2)(b).
- [E.r. 2]

**Case stated: notice to be given of certain matters**

3. Not less than 10 days before the hearing of such a case as is mentioned in rule 1(a) either party must give notice to the other of any point which he intends to take at the hearing and which might take the other party by surprise and leave at the Chancery Office two copies of the notice for the use of the Court.

[E.r. 4]

**Appeals under ss. 53 and 100 of Taxes Management Act 1970 and paragraphs 32(3) and 35(2) of Schedule 4 to the Finance Act 1975**

4.—(1) The notice of an originating motion by which an appeal under section 53 or 100 of the Taxes Management Act 1970 or paragraph 32(3) or 35(2) of Schedule 4 to the Finance Act 1975 is brought must be issued out of the Chancery Office.

(2) The persons to be served with the notice are the General or Special Commissioners against whose decision or award the appeal is brought and—

- (a) in the case of an appeal brought under section 100 of the Taxes Management Act 1970 or paragraph 32(3) of Schedule 4 to the Finance Act 1975 by any party other than the defendant in the proceedings before the Commissioners, that defendant;
  - (b) in any other case, the Commissioners of Inland Revenue.
- (3) Order 55, rules 14(2) and 15(1), shall apply in relation to any such appeal as if for the period of 21 days therein specified there were substituted a period of 30 days.
- (4) Within 30 days after the service on them of notice of the originating motion by which any such appeal is brought, the General or Special Commissioners, as the case may be, must lodge in the Chancery Office two copies of a note of their findings and of the reasons for their decision or award and must serve a copy of the note on every other party to the appeal.
- (5) Any document required or authorised to be served on the General or Special Commissioners in proceedings to which this rule relates may be served by delivering or sending it to their clerk.

[E.r. 5.]

## ORDER 92

### LODGMET, INVESTMENT, ETC. OF FUNDS IN COURT : CHANCERY DIVISION

#### **Payment into court by life assurance company**

1.—(1) A company wishing to make a payment into court under the Life Assurance Companies (Payment into Court) Act 1896(105) (hereinafter referred to as “the Act of 1896”) must file an affidavit, made by its secretary or other authorised officer, setting out—

- (a) a short description of the policy in question and a statement of the persons entitled thereunder with their names and addresses so far as known to the company,
- (b) a short statement of the notices received by the company claiming an interest in or title to the money assured, or withdrawing any such claim, with the dates of receipt thereof and the names and addresses of the persons by whom they were given,
- (c) a statement that, in the opinion of the board of directors of the company, no sufficient discharge can be obtained otherwise than by payment into court under the Act of 1896,
- (d) the submission by the company to pay into court such other sum, if any, as the Court may direct and to pay any costs ordered by the Court to be paid by the company.
- (e) an undertaking by the company forthwith to send to the Accountant General any notice of claim received by the company after the making of the affidavit with a letter referring to the title of the affidavit, and
- (f) an address where the company may be served with any summons or order, or notice of any proceeding, relating to the money paid into court.

(2) The company shall not deduct from the money payable by them under the policy any costs of or incidental to the payment into court.

(3) No payment shall be made into court under the Act of 1896 where any action to which the company is a party is pending in relation to the policy or moneys thereby assured except with the leave of the Court to be obtained by summons in the action.

(4) Unless the Court otherwise directs, a summons by which a claim with respect to money paid into court under the Act of 1896 is made shall not, except where the summons includes an application

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for payment of a further sum of costs by the company who made the payment, be served on that company, but it must be served on every person who appears by the affidavit on which the payment into court was made to be entitled to, or interested in, the money in court or to have a claim upon it or who has given a notice of claim which has been sent to the Accountant General in accordance With the undertaking referred to in rule 1(1)(e).

[E.r. 1]

### **Payment into court under Trustee Act (Northern Ireland) 1958**

2.—(1) Subject to paragraph (2), any trustee wishing to make a payment into court under section 63 of the Trustee Act (Northern Ireland) 1958(**106**) must make and file an affidavit setting out—

- (a) a short description of the trust and of the instrument creating it or, as the case may be, of the circumstances in which the trust arose,
- (b) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known to him,
- (c) his submission to answer all such inquiries relating to the application of such money or securities as the Court may make or direct, and
- (d) an address where he may be served with any summons or order, or notice of any proceedings, relating to the money or securities paid into court.

(2) Where the money or securities represents a legacy, or residue or any share thereof, to which a minor or a person resident outside the United Kingdom is absolutely entitled, no affidavit need be filed under paragraph (1) and the money or securities may be paid into court in the manner prescribed by court funds rules made under section 82 of the Act.

[E.r. 2]

### **Payment into court under War Damage Act 1943**

3. Where the Commissioners of Inland Revenue wish to make a payment into court under section 33(1) of the War Damage Act 1943(**107**) in respect of war damage to a hereditament, they shall cause an affidavit to be made and filed setting out—

- (a) short particulars of the hereditament;
- (b) the name and address of any person who has claimed a payment in respect of war damage to the hereditament or a share of such payment, and
- (c) the grounds on which the Commissioners wish to make the payment into court.

[E.r. 3]

### **Notice of lodgment**

4. Any person who has lodged money or securities in court in accordance with rule 1, 2 or 3 must forthwith send notice of the lodgment to every person appearing from the affidavit on which the lodgment was made to be entitled to, or to have an interest in, the money or securities lodged.

[E.r. 4]

### **Applications with respect to funds in court**

5.—(1) Where an application to the High Court—

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(**106**)1958 (N.I.) c. 23

(**107**)1943 c. 21

- (a) for the payment or transfer to any person of any funds in court standing to the credit of any cause or matter or for the transfer of any such funds to a separate account or for the payment to any person of any dividend of or interest on any securities or money comprised in such funds;
- (b) for the investment, or change of investment, of any funds in court;
- (c) for payment of the dividends of or interest on any funds in court representing or comprising money or securities lodged in court under any enactment, or
- (d) for the payment or transfer out of court of any such funds as are mentioned in subparagraph (c);

is made in the Chancery Division the application may be disposed of in chambers.

(2) Subject to paragraph (3), any such application made in the Chancery Division must be made by summons and, unless the application is made in a pending cause or matter or an application for the same purpose has previously been made by petition or originating summons, the summons must be an originating summons.

(3) Where an application under paragraph 1(d) is required to be made by originating summons, then, if the funds to which the application relates do not exceed £500 in value the application may be made ex parte to the Master who may dispose of the application or may direct it to be made by originating summons.

Unless otherwise directed, an ex parte application under this paragraph shall be made by affidavit.

- (4) This rule does not apply to any application for an order under Order 22.

[E.r. 5]

## ORDER 93

### APPLICATIONS AND APPEALS TO THE HIGH COURT UNDER VARIOUS ENACTMENTS: CHANCERY DIVISION

#### **Appeals, applications etc. under various enactments**

1.—(1) Any appeal, application or reference to the High Court under any of the enactments referred to in paragraph (2), whether it is for the decision or opinion of the Court shall be assigned to the Chancery Division.

(2) The enactments are:—

- (a) section 55 of the National Debt Act 1870(**108**),
- (b) the Land Purchase Acts,
- (c) the Vendor and Purchaser Act 1874(**109**),
- (d) the Conveyancing Acts 1881 to 1911,
- (e) section 17 of the Married Women's Property Act 1882(**110**),
- (f) the Settled Land Acts 1882 to 1890,
- (g) the Trade Union Act 1913(**111**),
- (h) the Trustee Act (Northern Ireland) 1958(**112**),

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(108) 1870 c. 71

(109) 1874 c. 78

(110) 1882 c. 75

(111) 1913 c. 30

(112) 1958 c. 23 (N.I.)

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- (i) the Charities Act (Northern Ireland) 1964(**113**),
- (j) the Building Societies Act (Northern Ireland) 1967(**114**),
- (k) the Industrial and Provident Societies Act (Northern Ireland) 1969(**115**),
- (l) section 7(3) of the Public Order Amendment Act (Northern Ireland) 1970(**116**),
- (m) the Land Registration Act (Northern Ireland) 1970(**117**),
- (n) the Friendly Societies Act (Northern Ireland) 1970(**118**),
- (o) the Industrial Assurance (Northern Ireland) Order 1979(**119**).

(3) At any stage of the proceedings on an appeal under the enactments mentioned in paragraph (2) (g) (j) (k) (m) (n) and (o) the Court may direct that notice of the originating motion by which the appeal is brought be served on any person or may direct that notice be given by advertisement or otherwise of the bringing of the appeal, the nature thereof and the time when it will or is likely to be heard or may give such other directions as it thinks proper for enabling any person interested in the trade union, alleged trade union, society, or industrial assurance company concerned or in the subject matter of the appeal to appear and be heard on the appeal.

(4) An application for directions under paragraph (3) may be made by either party to the appeal by summons to the Judge in Chambers.

[E.rr. 4, 10 and 12]

#### **Notice of petition under section 55 of National Debt Act 1870**

2. Where a petition is presented under section 55 of the National Debt Act 1870 the petitioner must, before the petition is heard, apply to the Chancery Judge in chambers for directions with respect to giving notice of the claim to which the petition relates, and the judge may direct that notice thereof be given by advertisement or in such other manner as he may direct or may dispense with the giving of such notice.

[E.r. 1]

#### **Applications under section 57 of the Trustee Act (Northern Ireland) 1958**

3. In addition to any other persons who are necessary and proper defendants to the originating summons by which an application under section 57 of the Trustee Act (Northern Ireland) 1958 is made, the settlor and any other person who provided property for the purposes of the trusts to which the application relates must, if still alive and not the plaintiff, be made a defendant unless the Court for some special reason otherwise directs.

[E.r. 6(2)]

#### **Application under section 7(3) of Public Order (Amendment) Act (Northern Ireland) 1970**

4.—(1) Where an application is made to the High Court under section 7(3) of the Public Order (Amendment) Act (Northern Ireland) 1970 the persons to be made defendants to the originating summons by which such an application is made shall be such persons as the Attorney General may determine.

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(113) 1964 c. 33 (N.I.)

(114) 1967 c. 31 (N.I.)

(115) 1969 c. 24 (N.I.)

(116) 1970 c. 4 (N.I.)

(117) 1970 c. 18

(118) 1970 c. 31 (N.I.)

(119) S.I. 1979 No. 1574 (N.I. 13)



(2) In the absence of other sufficient representation the Court may appoint the Official Solicitor to represent any interests which in the opinion of the Court ought to be represented on any inquiry directed by the Court under the said section 7(3).

[E.r. 5]

### **Appeal under Article 18 of the Industrial Assurance (Northern Ireland) Order 1979**

5.—(1) An application to the Court for leave to appeal under Article 18 of the Industrial Assurance (Northern Ireland) Order 1979 against a direction of the Industrial Assurance Commissioner for Northern Ireland under Article 18(3) of that Order must be made within 21 days after the date of the Commissioner's direction.

(2) An application for the grant of such leave must be made in chambers ex parte by an affidavit stating the material facts, the effect of the Commissioner's direction, the grounds on which the application is made and that the deponent is advised and believes that the applicant has good grounds for appealing.

(3) No order under this rule granting leave to appeal shall be drawn up but the Master shall indorse on the notice of originating motion by which the appeal is brought a note signed by him stating that leave to appeal was granted by the Court and the date on which it was granted.

A copy of such note shall appear on any copy of such notice served on a respondent to the appeal.

(4) Notice of the originating motion by which the appeal is brought must be served, and the appeal entered within 28 days after leave to appeal was granted.

[E.r. 11]

## **ORDER 94**

[No Order made]

## **ORDER 95**

### **THE BILLS OF SALE (IRELAND) ACTS 1879 AND 1883 AND THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT (NORTHERN IRELAND) 1969**

#### **Rectification of register**

1.—(1) Every application to the Court under section 14 of the Bills of Sale (Ireland) Act 1879(120) for an order—

- (a) that any omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by that Act be rectified by extending the time for such registration, or
- (b) that any omission or mis-statement of the name, residence or occupation of any person be rectified by the insertion in the register of his true name, residence or occupation,

must be made by affidavit ex parte to the Master.

(2) Every application for such an order as is described in paragraph (1) shall be supported by an affidavit setting out particulars of the bill of sale and of the omission or mis-statement in question and stating the grounds on which the application is made.

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[E.r. 1]

### **Entry of satisfaction**

2.—(1) Every application under section 15 of the Bills of Sale (Ireland) Act 1879 to the Master for an order that a memorandum of satisfaction be written on a registered copy of a bill of sale must—

- (a) if a consent to the satisfaction signed by the person entitled to the benefit of the bill of sale can be obtained, be made ex parte;
- (b) in all other cases, be made by originating summons.

(2) An ex parte application under paragraph (1)(a) must be supported by—

- (a) particulars of the consent referred to in that paragraph, and
- (b) an affidavit by a witness who attested the consent certifying the signature on it.

(3) An originating summons under paragraph (1)(b) must be served on the person entitled to the benefit of the bill of sale and must be supported by evidence that the debt (if any) for which the bill of sale was made has been satisfied or discharged.

(4) No appearance need be entered to an originating summons under paragraph (1)(b).

[E.r. 2]

### **Restraining removal on sale of goods seized**

3. No appearance need be entered to an originating summons by which an application to the Court under the proviso to section 7 of the Bills of Sale (Ireland) Act (1879) (Amendment) Act 1883(121) must be made.

[E.r. 3]

### **Search of register**

4. Any person shall be entitled to search the register of bills of sale on payment of the prescribed fee and to inspect, examine and make extracts from any registered bill of sale, without being required to make a written application, or to specify any particulars in reference thereto, such extracts not to exceed date of execution, registration, renewal of registration, satisfaction, names, addresses and occupation of parties, and amount of consideration.

### **Transmission of abstract etc. to county court**

5.—(1) The abstract or the contents of any bill of sale required by section 11 of the Bills of Sale (Ireland) Act (1879) Amendment Act 1883 to be transferred to the chief clerk of a county court division shall be in Form No. 42 in Appendix A—

(2) Where a bill of sale is re-registered under section 11 of the Bills of Sale (Ireland) Act 1879, an abstract of the re-registration shall be transmitted by post to the chief clerk to whom such abstract would have been transmitted had the bill of sale been registered under, the Bills of Sale (Ireland) Act (1879) Amendment Act 1883.

(3) Where a memorandum of satisfaction is written under section 15 of the Bills of Sale (Ireland) Act 1879 upon any registered or re-registered copy of a bill of sale, an abstract of which has been transmitted to any chief clerk, a notice of such satisfaction, in Form No. 43 in Appendix A, shall be transmitted to each clerk to whom an abstract of such bill of sale has been transmitted.

### Local registration

6.—(1) The chief clerk of a county court (hereinafter called “the clerk”) shall number the abstracts and notices of satisfaction in the order in which they shall respectively be received by him and shall file and keep them in his office.

(2) The clerk shall keep an index, alphabetically arranged, in which he shall enter under the first letter of the surname of the mortgagor or assignor, such surname with the forenames, address and description, and the number which has been affixed to the abstract.

(3) Upon receipt of a notice of satisfaction, the clerk shall enter the notice of satisfaction on the abstract of the bill to which it relates and shall note in the index against the name of the mortgagor or assignor the fact of the satisfaction having been entered.

(4) The clerk shall allow any person to search the index at any time during which he is required for the time being to keep his office open, upon payment by such person of a fee of 50 pence, and to make extracts from the abstract and notice of satisfaction (if any), upon payment of 50 pence for each abstract inspected.

(5) The clerk shall also, if required, cause an office copy to be made of any abstract or notice of satisfaction and shall be entitled for making and marking the same to the same fee as is payable to the Central Office.

### Application under section 29(5) of the Industrial and Provident Societies Act (Northern Ireland) 1969

7. Every application to the Court under section 29(5) of the Industrial and Provident Societies Act (Northern Ireland) 1969(122) for an order—

- (a) that the period for making an application for recording a charge be extended, or
- (b) that any omission from or mis-statement in such an application be rectified,

must be made to the Master ex parte by affidavit setting out particulars of the charge and of the omissions or mis-statement in question and stating the grounds of the application.

[E.r. 5]

### Interpretation

8. In this Order, “the Master” means the Master (Queen's Bench and Appeals) or such other officer serving in the Supreme Court as the Lord Chief Justice may designate to be the registrar for the purposes of the Bills of Sale (Ireland) Act 1879.

## ORDER 96

### THE DEEDS OF ARRANGEMENT ACT 1887 AND THE DEEDS OF ARRANGEMENT AMENDMENT ACT 1890

### Interpretation

1.—(1) In the rules of this Order, unless the context or subject matter otherwise requires—

“the 1887 Act” means the Deeds of Arrangement Act 1887(123);

“the 1890 Act” means the Deeds of Arrangement Amendment Act, 1890(124);

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(122) 1969 c. 24 (N.I.)

(123) 1887 c. 57

(124) 1890 c. 24

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“debtor” means any person by, for, or in respect of whose affairs a deed of arrangement, as defined by the 1887 Act, shall be made or entered into and includes a firm of persons in co-partnership;

“deed” means any deed of arrangement as defined by the 1887 Act.

(2) Any terms and expressions defined by the said Acts shall have meanings assigned to them thereby.

#### **Affidavit to register deed**

2. The affidavits to be filed pursuant to section 6 of the 1887 Act shall be in the Forms Nos. 44 and 45 in Appendix A with such variations as circumstances may require.

#### **Form of register under 1887 Act**

3. The abstract of the contents of any deed to be entered on the register under the 1887 Act shall be in Form No. 46 in Appendix A.

#### **Indorsement of copy deed**

4. Upon every copy of a deed which is presented for filing there shall be indorsed, by the person who presents it, the name of the debtor, the date of the deed, and of the filing thereof, the total amount of duty with which the deed is stamped, and a certificate signed by the solicitor of the debtor or the person who presents the copy for filing, certifying that the copy is a correct copy of the deed, and stating the number of folios (of seventy-two words each), which the deed contains.

#### **Certificate of registration**

5. When a deed is registered under the said Acts there shall be written on the original deed a certificate stating that the deed has been duly registered as prescribed by the said Acts, and the date of registration.

#### **Extracts from deed**

6. Extracts from the filed copy of a deed shall be limited to the date of execution and registration, the names, addresses, and descriptions of the debtor, and the parties to the deed, and a short statement of the nature and effect of the deed.

#### **Copy of affidavit etc. under 1890 Act**

7. A copy petition, affidavit or order to be filed pursuant to section 2 of the 1890 Act may be a copy produced by photographic or other process giving a positive, clear and permanent representation free from blemishes.

#### **Form of register under 1890 Act**

8. The abstract of the contents of any documents to be entered on the Register under the 1890 Act, shall be in the Form No. 47 in Appendix A.

#### **Abstract of documents under 1890 Act**

9. Abstracts from any document filed under the 1890 Act, shall be limited to the date of the petition and order in bankruptcy mentioned in section 2, (1) and (3), of the said Act the name,

address, and description of the debtor, and a short statement of the nature and effect of the resolution of creditors confirmed by the said order in bankruptcy.

### **Rectification of register**

10.—(1) Every application to the Court under section 9 of the 1887 Act for an order—

- (a) that any omission to register a deed of arrangement within the time prescribed by that Act or the 1890 Act be rectified by extending the time for such registration, or
- (b) that any omission or mis-statement of the name, residence or description of any person be rectified by the insertion in the register of his true name, residence or description,

must be made ex parte to the Master (Queen's Bench and Appeals).

(2) The affidavit must set out particulars of the deed of arrangement and of the omission or mis-statement in question and must state the grounds on which the application is made.

## **ORDER 97**

### **NON-CONTENTIOUS PROBATE PROCEEDINGS**

#### **Interpretation**

1.—(1) In this Order unless the context otherwise requires—

“the Order” means the Administration of Estates (Northern Ireland) Order 1979(125);

“authorised officer” means any officer of the Office or a branch office who is for the time being authorised by the Lord Chief Justice to administer any oath or take any affidavit required for any purpose connected with his duties;

“grant” means a grant of probate or administration;

“the Judge” means the Judge for the time being to whom the business of the Family Division is assigned under section 17 of the Act and any judge of the High Court exercising jurisdiction in probate causes and matters;

“the Office” means the Probate and Matrimonial Office of the Family Division;

“Master” in rules 3, 4, 5, 7, 8, 9(1) and (2), 10, 11, 12, 13, 14, 15, 17, 18, 20(6), 26(1), 31, 32; 37, 38, 58, 59 and 60 includes a circuit registrar in relation to an applicant for a grant made or proposed to be made at a branch office;

“personal applicant” means a person other than a trust corporation who seeks to obtain a grant without employing a solicitor, and

“personal application” has a corresponding meaning.

(2) A form referred to by number means the form so numbered in Appendix C; and such forms shall be used whenever applicable, with such variations as the Master may in any particular case direct or approve.

[E. Non-Contentious Probate Rules: r. 2]

#### **Applications for grants through solicitors**

2.—(1) A person applying for a grant through a solicitor may apply otherwise than by post at the Office or any branch office and may apply by post at any branch office.

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(2) Every solicitor through whom an application for a grant is made shall give the address of his place of business within the jurisdiction.

[E.r. 3]

### **Personal Applications**

3.—(1) A personal applicant may apply for a grant otherwise than by post at the Office or any branch office.

(2) A personal applicant may not apply through an agent, whether paid or unpaid, and may not be attended by any person acting or appearing to act as his adviser.

(3) No personal application shall be received or proceeded with if—

- (a) it becomes necessary to bring the matter before the Court on motion or by action;
- (b) an application has already been made by a solicitor on behalf of the applicant and has not been withdrawn;
- (c) the Master otherwise directs.

(4) After a will has been deposited in the Office or any branch office by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the Master so directs.

(5) A personal applicant shall produce a certificate of the death of the deceased or such other evidence of the death as the Master may approve.

(6) A personal applicant shall supply all information necessary to enable the papers leading to the grant to be prepared in the Office or branch office as the case may be, or may himself prepare such papers and lodge them unsworn.

(7) Unless the Master otherwise directs, every oath, affidavit or guarantee required on a personal application (other than a guarantee given by a corporation in accordance with rule 38), shall be sworn or executed by all the deponents or sureties before an authorised officer.

(8) No legal advice shall be given to a personal applicant by any officer of the Office or branch office and every such officer shall be responsible only for embodying in proper form the applicant's instructions for the grant.

[E.r. 4]

### **Duty of Master on receiving application for grant**

4.—(1) The Master shall not allow any grant to issue until all inquiries which he may see fit to make have been answered to his satisfaction.

(2) The Master may require proof of the identity of the deceased or of the applicant for the grant beyond that contained in the oath.

(3) Except with the leave of the Master, no grant of probate or of administration with the will annexed shall issue within seven days of the death of the deceased and no grant of administration shall issue within fourteen days thereof;

[E.r. 5]

### **Oath in support of grant**

5.—(1) Every application for a grant shall be supported by an oath in the form applicable to the circumstances of the case, which shall be contained in an affidavit sworn by the applicant, and by such other papers as the Master may require.

(2) On an application for a grant of administration the oath shall state whether, and if so, in what manner, all persons having a prior right to a grant have been cleared off.

(3) Unless otherwise directed by the Master, the oath shall state where the deceased died domiciled.

[E.r. 6]

#### **Grant in additional name**

6. Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the oath the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name, or as to any other reason that there may be for the inclusion of the other name in the grant.

[E.r. 7]

#### **Marking of wills**

7. Every will in respect of which an application for a grant is made shall be marked by the signatures of the applicant and the person before whom the oath is sworn, and shall be exhibited to any affidavit which may be required under this Order as to the validity, terms, condition or date of execution of the will;

Provided that where the Master is satisfied that compliance with this rule might result in the loss of the will, he may allow a photographic copy thereof to be marked or exhibited in lieu of the original document.

[E.r. 8]

#### **Engrossments for purposes of record**

8.—(1) Where the Master considers that in any particular case a photographic copy of the original will would not be satisfactory for purposes of record, he may require an engrossment suitable for photographic reproduction to be lodged.

(2) Where a will contains alterations which are not admissible to proof, there shall be lodged an engrossment of the will in the form in which it is to be proved.

(3) Any engrossment lodged under this rule shall reproduce the punctuation, spacing and division into paragraphs of the will and, if it is one to which paragraph (2) of this rule applies, it shall be made book-wise on durable paper following continuously from page to page on both sides of the paper.

(4) Where any pencil writing appears on a will, there shall be lodged a copy of the will or of the pages or sheets containing the pencil writing, in which there shall be underlined in red ink those portions which appear in pencil in the original.

[E.r. 9]

#### **Evidence as to due execution of will**

9.—(1) Where a will contains no attestation clause or the attestation clause is insufficient or where it appears to the Master that there is some doubt about the due execution of the will, he shall, before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the will was executed.

(2) If no affidavit can be obtained in accordance with the last foregoing paragraph, the Master may, if he thinks fit having regard to the desirability of protecting the interests of any person who may be prejudiced by the will, accept evidence on affidavit from any person he may think fit to show

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that the signature on the will is in the handwriting of the deceased, or of any other matter which may raise a presumption in favour of the due execution of the will.

- (3) If the Master, after considering the evidence—
- (a) is satisfied that the will was not duly executed, he shall refuse probate and shall mark the will accordingly;
  - (b) is doubtful whether the will was duly executed, he may refer the matter to the court on motion.

[E.r. 10]

#### **Execution of will of blind or illiterate testator**

10. Before admitting to proof a will which appears to have been signed by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason gives rise to doubt as to the testator having had knowledge of the contents of the will at the time of its execution, the Master shall satisfy himself that the testator had such knowledge.

[E.r. 11]

#### **Evidence as to terms, conditions and date of execution of will**

11.—(1) Where there appears in a will any obliteration, interlineation, or other alteration which is not authenticated in the manner prescribed by section 21 of the Wills Act 1837(**126**), or by the re-execution of the will or by the execution of a codicil, the Master shall require evidence to show whether the alteration was present at the time the will was executed and shall give directions as to the form in which the will is to be proved :

Provided that this paragraph shall not apply to any alteration which apply appears to the Master to be of no practical importance.

(2) If from any mark on the will it appears to the Master that some other document has been attached to the will, or if a will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the will, the Master may require the document to be produced and may call for such evidence in regard to the attaching or incorporation of the document as he may think fit.

(3) Where there is doubt as to the date on which a will was executed, the Master may require such evidence as he thinks necessary to establish the date.

[E.r. 12]

#### **Attempted revocation of will**

12. Any appearance of attempted revocation of a will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for to the Master's satisfaction.

[E.r. 13]

#### **Affidavit as to due, execution, terms, etc. of will**

13. The Master may require an affidavit from any person he may think fit for the purpose of satisfying himself as to any of the matters referred to in rules 10, 11 and 12, and in any such affidavit sworn by an attesting witness or other person present at the time of the execution of a will the deponent shall depose to the manner in which the will was executed.



[E.r. 14]

### **Wills not proved under section 9 of the Wills Act, 1837**

14. Nothing in rule 9, 10, 11 or 12 shall apply to any will which it is sought to establish otherwise than by reference to section 9 of the Wills Act, 1837, as explained by the Wills Act Amendment Act, 1852(127), but the terms and validity of any such will shall be established to the Master's satisfaction.

[E.r. 15]

### **Wills of persons on military service and seamen**

15. If it appears to the Master that there is prima facie evidence that a will is one to which section 11 of the Wills Act, 1837, as amended by any subsequent statutory provision applies, the will may be admitted to proof if the Master is satisfied that it was signed by the testator or, if unsigned, that it is in the testator's handwriting.

[E.r. 16]

### **Wills of naval personnel**

16. Every application for a grant in respect of the estate of a person who has at any time served in the capacity to which the Navy and Marines (Wills) Act 1865(128) applies shall be supported by a certificate of the Inspector of Seamen's Wills as to the existence of any will in his custody :

Provided that no such certificate shall be required where—

- (a) the application relates to a will made after the deceased had ceased to serve in such capacity as aforesaid which revokes all previous wills made by him, or
- (b) the deceased was at the date of his death in receipt of a pension in respect of his service.

[E.r. 17]

### **Evidence of foreign law**

17. Where evidence as to the law of any country or territory outside Northern Ireland is required on any application for a grant, the Master may accept an affidavit from any person whom, having regard to the particulars of his knowledge or experience given in the affidavit, he regards as suitably qualified to give expert evidence of the law in question.

[E.r. 18]

### **Order of priority for grant where deceased left a will**

18. Where the deceased died on or after the 1st January 1956 domiciled in Northern Ireland, the person or persons entitled to a grant of probate or administration with the will annexed shall be determined in accordance with the following order of priority, namely : —

- (i) The executor;
- (ii) Any residuary legatee or devisee holding in trust for any other person;
- (iii) Any residuary legatee or devisee for life;
- (iv) The ultimate residuary legatee or devisee, or subject to paragraph (3) of rule 22 the personal representative of any such person; or where the residue is not wholly disposed of by the will, any person (other than a creditor) entitled to a grant in the

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(127) 1852 c. 24

(128) 1865 c. 72

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event of a total intestacy according to the priority set out in rule 20 if such person has an interest in the undisposed of residue (including the nominee of Her Majesty under Article 10 of the Order when claiming bona vacantia on behalf of the Crown)

Provided that where the residue is not in terms wholly disposed of, the Master may, if he is satisfied that, the testator has nevertheless disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made (subject however to rule 37) to any legatee or devisee entitled to, or to a share in, the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the will;

- (v) Any specific legatee or devisee or any creditor or, subject to paragraph (3) of rule 22, the personal representative of any such person or, where the estate is not wholly disposed of by will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an accretion thereto;
- (vi) Any legatee or devisee whether residuary or specific entitled on the happening of any contingency, or any person having no interest under the will of the deceased who would have been entitled to a grant if the deceased had died wholly intestate.

[E.r. 19]

#### **Grants to attesting witnesses, etc.**

19. Where a gift to any person fails by reason of section 15 of the Wills Act 1837 (which provides that gifts to attesting witnesses or their spouses shall be void), such person shall not have any right to a grant as a beneficiary named in the will, without prejudice to his right to a grant in any other capacity.

[E.r. 20]

#### **Order of priority for grant in case of intestacy**

20.—(1) Where the deceased died on or after the 1st January 1956, wholly intestate and domiciled in Northern Ireland, the persons having a beneficial interest in the estate of the deceased shall be entitled to a grant of administration in the following order of priority, namely :—

- (i) The surviving spouse;
- (ii) The children of the deceased (including any persons entitled by virtue of any enactment to be treated as if they were the children of the deceased born in lawful wedlock); or the issue (taking per stirpes) of any child who has died during the lifetime of the deceased;
- (iii) The father or mother of the deceased or, in the case of an illegitimate person who died before 1st January 1978 without having been legitimated, the mother;
- (iv) Brothers and sisters of the deceased (whether of the whole or half-blood); or the issue (taking per stirpes) of any deceased brother or sister (whether of the whole or half-blood) who has died during the lifetime of the deceased.

(2) If the deceased died wholly intestate leaving no spouse and if no person in any of the classes mentioned in sub-paragraphs (ii) to (iv) of paragraph (1) has survived the deceased the persons hereinafter described shall, if they have a beneficial interest in the estate of the deceased, be entitled to a grant in the following order of priority, namely :—

- (i) Grandparents;
- (ii) Uncles and aunts (whether of the whole or half-blood); or the issue (taking per stirpes) of any uncle or aunt (whether of the whole or half-blood) who has died during the lifetime of the deceased;

- (iii) Great-grandparents;
- (iv) Grand-uncles and grand-aunts (whether of the whole or half-blood);
- (v) Great-great-grandparents;
- (vi) Great-grand-uncles and great-grand-aunts (whether of the whole or half-blood); or children of grand-uncles and of grand-aunts (whether of the whole or half-blood);
- (vii) Great-great-great-grandparents;
- (viii) Children of the children of grand-uncles and of grand-aunts (whether of the whole or half-blood); or children of great-granduncles and of great-grand-aunts (whether of the whole or half-blood); or uncles or aunts (whether of the whole or half-blood) or great-grandparents;
- (ix) Other next of kin of nearest degree (whether of the whole or half-blood).

(3) The personal representative of any of the persons hereinbefore mentioned shall have the same right to a grant as the person whom he represents, subject to paragraph (3) of rule 22 which provides that live interests be preferred to dead interests.

(4) Where there are conflicting claims for a grant among the members of a class entitled to administration, the nearer in kin to the deceased of that class shall be preferred to the more remote unless the Master otherwise directs.

(5) In default of any person having a beneficial interest in the estate of the deceased, the nominee of Her Majesty, under Article 10 of the Order shall be entitled to a grant.

(6) If all persons entitled to a grant under the foregoing provisions of this rule have been cleared off, a grant may be made to a creditor of the deceased, or, subject to paragraph (3) of rule 22, the personal representative of a creditor, or, if the Master so directs, to any person who, notwithstanding that he has no immediate beneficial interest in the estate, may have a beneficial interest in the event of an accretion thereto.

(7) The provisions of the Adoption of Children Act (Northern Ireland) 1967(129), shall apply in determining the title to a grant as they apply to the devolution of property on intestacy.

(8) In this rule where the deceased died on or after the 1st January 1978 illegitimate the reference to father or mother of the deceased shall have effect as if it were a reference to the natural father or mother of the deceased.

[E.r. 21]

### **Right of assignee to a grant**

21.—(1) Where all the persons entitled to the estate of the deceased (whether under a will or on intestacy) have assigned their whole interest in the estate to one or more persons, the assignee of assignees shall replace, in the order of priority for a grant of administration, the assignor or, if there are two or more assignors, the assignor with the highest priority.

(2) Where there are two or more assignees, administration may be granted with the consent of the others to any one or more (not exceeding four) of them.

(3) In any case where administration is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the Office or branch office as the case may be.

[E.r. 22]

### **Grants where two or more persons entitled in the same class**

22.—(1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same class.

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(2) A dispute between the members of a class entitled to a grant shall be brought by summons before the Master.

(3) Unless the Master otherwise directs, administration shall be granted to a living member of a class entitled thereto in preference to the personal representative of a member of such class who has died after the deceased and to a person not under disability in preference to an infant entitled in the same class.

(4) If the issue of a summons under this rule is known to the Master he shall not allow any grant to be sealed until such summons is finally disposed of.

[E.r. 25]

### **Exceptions to rules as to priority**

23.—(1) Nothing in rule 18, 20 or 22 shall operate to prevent a grant being made to any person to whom a grant may or may require to be made under any statutory provision.

(2) The rules mentioned in the last foregoing paragraph shall not apply where the deceased died domiciled outside Northern Ireland, except in a case to which the proviso to rule 25 applies.

[E.r. 26]

### **Grants to persons having spes successionis**

24. When the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his right to a grant and has consented to administration being granted to the person or persons who would be entitled to his estate if he himself had died intestate, administration may be granted to such person or one or more (not exceeding four) of such, persons;

Provided that a surviving spouse shall not be regarded as a person in whom the estate has vested absolutely unless he would be entitled to the whole of the estate, whatever its value may be.

[E.r. 27]

### **Grants where the deceased died domiciled outside Northern Ireland**

25. Where the deceased died on or after the 1st January 1956, domiciled outside Northern Ireland, a grant of administration with or without the will annexed may be made by the Master—

- (a) to the person entrusted with the administration of the estate by the court having jurisdiction at the place where the deceased died domiciled,
- (b) to the person entitled to administer the estate by the law of the place where the deceased died domiciled,
- (c) if there is no such person as is mentioned in paragraph (a) or (b) of this rule or if in the opinion of the Master; the circumstances so require, to such person as the Master may direct;

Provided that :

- (a) probate of any will which is admissible to proof may be granted—
  - (i) if the will is in the English language, to the executor named therein;
  - (ii) if the will describes the duties of a named person in terms sufficient to constitute him executor according to the tenor of the will, to that person;
- (b) where the whole of the estate in Northern Ireland consists of immovable property, a grant limited thereto may be made in accordance with the law which would have been applicable if the deceased had died domiciled in Northern Ireland.

[E.r. 29]

### Grants, to attorneys

26.—(1) Where a person entitled to a grant resides outside Northern Ireland, administration may be granted to his lawfully constituted attorney for his use and benefit, limited until such person shall obtain a grant or in such other way as the Master may direct;

Provided that where the person so entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any, unless such notice is dispensed with by the Master:

(2) Where the Master is satisfied by affidavit that it is desirable for a grant to be made to the lawfully constituted attorney of a person entitled to a grant of administration and resident in Northern Ireland, he may direct that administration be granted to such attorney for the use and benefit of such person, limited until such person shall obtain a grant or in such other way as the Master may direct.

[E.r. 30]

### Grants on behalf of minors

27.—(1) Where the person to whom a grant would otherwise be made is a minor, administration for his use and benefit until he attains the age of eighteen years shall, subject to paragraphs (3) and (4) of this rule, be granted—

- (a) to the testamentary guardian of the minor or to any guardian appointed by a court of competent jurisdiction, or by or under the provisions of the Guardianship of Infants Act 1886(130), or
- (b) if there is no such guardian able and willing to act and the minor has attained the age of sixteen years, to any next of kin nominated by the minor or, where the minor is a married woman, to any such next of kin or to her husband if nominated by her.

(2) Any person nominated under sub-paragraph (b) of the last foregoing paragraph may represent any other minor whose next of kin he is, being a minor below the age of sixteen years entitled in the same class as the minor who made the nomination.

(3) Notwithstanding anything in this rule, administration for the use and benefit of the minor until he attains the age of eighteen years may be granted to any person assigned as guardian by order of the Master in default of, or jointly with, or to the exclusion of, any such person as is mentioned in paragraph (1) of this rule; and such an order may be made on application by the intended guardian, who shall file an affidavit in support of the application and, if required by the Master, an affidavit of fitness sworn-by a responsible person.

(4) Where a minor who is sole executor has no interest in the residuary estate of the deceased, administration for the use and benefit of the minor until he attains the age of eighteen years and applies for and attains a grant shall, unless the Master otherwise directs, be granted to the person entitled to the residuary estate.

(5) A minor's right to administration may be renounced only by a person assigned as guardian under paragraph -(3) of this rule and authorised to renounce by the Master.

(6) A grant to a guardian on behalf of a minor shall be made for his use and benefit until he shall attain the age of eighteen years and shall apply for and obtain a grant, and a grant on behalf of more than one minor shall be made for their use and benefit until one of them shall attain the age of eighteen years and shall apply for and obtain a grant.

(7) If under paragraph (3) of rule 22 the Master directs a grant to be given for the use and benefit of a minor notwithstanding that there is a person of full age not under disability entitled to apply for a grant, he may also direct that the grant to the guardian of the minor be further limited until such person applies for and obtains a grant.

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(130) 1886 c. 27

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(8) Where a grant is given for the use and benefit of a minor and there is any other minor entitled to apply for a grant for whose use and benefit a grant has not been obtained, the Master may direct that the grant be further limited until such other minor attains the age of eighteen years and applies for and obtains a grant.

(9) Before giving a grant to any guardian of a minor the Master may require to be satisfied as to his fitness to act.

[E.r. 31]

### **Grants where minor co-executor**

28.—(1) Where one of two or more executors is a minor, probate may be granted to the other executor or executors not under disability, with power reserved of making the like grant to the minor on his attaining the age of eighteen years, and administration for the use and benefit of the minor until he attains the age of eighteen years and applies for and obtains a grant may be granted under rule 27 if and only if the executors who are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application therefor.

(2) A minor executor's right to probate on attaining the age of eighteen years may not be renounced by any person on his behalf.

[E.r. 32]

### **Grants in case of mental or physical incapacity**

29.—(1) Where the Master is satisfied that a person entitled to a grant is by reason of mental or physical incapacity incapable of managing his affairs, administration for his use and benefit, limited during his incapacity or in such other way as such Master may direct, may be granted—

- (a) in the case of mental incapacity, to the person authorised by an order of the Master of the Office of Care and Protection to apply for the grant, or
- (b) where there is no person so authorised, or in the case of physical incapacity—
  - (i) if the person incapable is entitled as executor and has no interest in the residuary estate of the deceased, to the person entitled to such estate;
  - (ii) if the person incapable is entitled otherwise than as executor or is an executor having an interest in the residuary estate of the deceased, to the person who would be entitled to a grant in respect of his estate if he had died intestate;

or to such other person as the Master may by order direct.

(2) Unless the Master otherwise directs, no grant of administration shall be made under this rule unless all persons entitled in the same class as the person incapable have been cleared off.

(3) In the case of mental incapacity, notice of intended application for a grant under this rule shall be given to the Office of Care and Protection except where the person incapable is an executor with no beneficial interest in the estate.

(4) In the case of physical incapacity, notice of intended application for a grant under this rule shall, unless the Master otherwise directs, be given to the person alleged to be so incapable.

[E.r. 33]

### **Grants to trust corporations**

30.—(1) Where a trust corporation applies for a grant through one of its officers, such officer shall lodge a certified copy of the resolution authorising him to make the application and shall depose in the oath that the corporation is a trust corporation within the meaning of Article 9 of the Order, and that it has power to accept a grant.

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(2) Subject to the provisions of the succeeding paragraphs, where a trust corporation applies for a grant of administration with or without will annexed (otherwise than as attorney for some person) there shall be lodged with the application for a grant the consents of all persons entitled to a grant and of all persons interested in the residuary or undisposed of estate of the deceased, unless the Master directs that such consents, or any of them, be dispensed with on such terms (if any) as he may think fit.

(3) Where an executor who has renounced his right to probate of a will is entitled to share in the residuary or undisposed of estate of the deceased his consent to a trust corporation obtaining a grant must be expressly given (as such consent may not be inferred from his renunciation) unless the Master directs that such consent be dispensed with on such terms (if any) as he may think fit.

(4) To enable a grant of administration to be made to a trust corporation, all the executors named in the will must be cleared off by death, renunciation or citation: Provided, however, that if the only persons entitled to probate of the will as executors are under the age of eighteen years, a grant of administration with will annexed may be made to a trust corporation on the consent of the persons entitled to the residuary or undisposed of estate of the deceased, unless the Master directs that such consents be dispensed with on such terms, if any, as he may think fit. Such a grant shall be limited until the executor or one of the executors attains the age of eighteen years. Where any such minor executor is entitled to share in the residuary or undisposed of estate, consent on his behalf may be given by his statutory, testamentary or other lawfully appointed guardian.

(5) Where all the persons entitled to a grant of administration with or without will annexed and all those interested in the residuary or undisposed of estate of a deceased are under the age of eighteen years, a grant of administration with or without will annexed may issue as of right to a trust corporation on consent of the statutory, testamentary or other already lawfully appointed guardians, but an order shall not be made by the Master assigning a guardian for the purpose of consenting to an application of a trust corporation for a grant, nor shall an election of a guardian by a minor be accepted for that purpose. If there are no guardians so qualified the issue of a grant to a trust corporation shall lie in the discretion of the Master.

Where, however, some of the persons entitled to a grant of administration with or without will annexed, or who are interested in the residuary or undisposed-of estate of a deceased are of full age (others being minors) the consents and renunciations of those of full age will be required unless the Master directs that any such consents or renunciations be dispensed with.

A grant to a trust corporation given under this paragraph shall be limited until one of the minors entitled to apply for a grant attains the age of eighteen years and applies for and obtains a grant.

[E.r. 34]

### **Grants to corporations other than trust corporations**

31. Where a corporation (not being a trust corporation) would, if an individual, be entitled to a grant, administration for its use and benefit, limited until further representation is granted, may be granted to its nominee or, if the corporation has its principal place of business outside Northern Ireland, its nominee or lawfully constituted attorney, and a copy of the resolution appointing the nominee or, as the case may be, the power of attorney, sealed by the corporation or otherwise authenticated to the Master's satisfaction, shall be lodged with the application for the grant, and the oath shall state that the corporation is not a trust corporation.

[E.r. 34]

### **Grants to nominees of certain legatees, devisees and creditors**

32. Where any legatee or devisee under the will of a deceased; or any creditor of a deceased—not being a corporation is an association, society, institution, community, order or other body of persons (whether private or public), the Master may, if all persons entitled in priority to a grant have been

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cleared off, give a grant to the nominee of such legatee, devisee, or creditor, for the use and benefit of such legatee, devisee, or creditor. The nomination of the applicant for the grant shall be made in such manner as the Master shall require.

#### **Nil estate grants**

33. Where a grant is given in respect of a deceased person by virtue of the provisions of Article 4(4) of the Order, it shall

- (a) in the case of an original grant be given to such person as would have been entitled thereto had the deceased died leaving assets nominal in amount in Northern Ireland, and
- (b) in the case of a de bonis non or other form of, grant in respect of unadministered estate, to such person as would have been entitled thereto if there has been assets of the deceased nominal in amount unadministered in Northern Ireland at the time of making such grant.

#### **Number of administrators**

34. No grant of administration shall be made jointly to more than four persons unless the Master otherwise orders.

#### **Administration de bonis non**

35. Where on the death of a personal representative of a deceased without having fully administered the estate, it is necessary to grant administration of the unadministered estate of the deceased, the provisions of this Order that shall apply to the ascertainment of the new grantee shall be those that apply on an application for an original grant.

#### **Renunciation of probate and administration**

36.—(1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to a grant of administration in some other capacity unless he expressly renounces such right.

(2) Unless the Master otherwise directs, no person who has renounced administration in one capacity may obtain a grant thereof in some other capacity.

(3) A renunciation of probate or administration may be retracted at any time on the order of the Master;

Provided that only in exceptional circumstances may leave be given to an executor to retract a renunciation of probate after a grant has been made to some other person entitled in a lower class.

[E.r. 35]

#### **Notice to Crown of intended application for grant**

37. In any case in which it appears that the Crown is or may be beneficially interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Crown Solicitor, and the Master may direct that no grant shall issue within a specified time after the notice has been given.

[E.r. 37]

#### **Guarantee**

38.—(1) The Master shall not require a guarantee under Article 17 of the Order as a condition of granting administration except where it is proposed to grant it—



- (a) by virtue of rule 18(v) or rule 20(6) to a creditor or the personal representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;
- (b) under rule 24 to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate, be entitled to his estate;
- (c) under rule 26 to the attorney of a person entitled to a grant;
- (d) under rule 27 for the use and benefit of a minor;
- (e) under rule 29 for the use and benefit of a person who is by reason of mental or physical incapacity incapable of managing his affairs;
- (f) to an applicant who appears to the Master to be resident elsewhere than in the United Kingdom;

or except where the Master considers that there are special circumstances making it desirable to require a guarantee.

(2) Notwithstanding that it is proposed to grant administration as aforesaid, a guarantee shall not be required, except in special circumstances, on an application for administration where the applicant or one of the applicants is—

- (a) a trust corporation;
- (b) a solicitor holding a current practising certificate under the Solicitors (Northern Ireland) Order 1976(131);
- (c) a servant of the Crown acting in his official capacity.

(3) Where the master considers there are special circumstances under paragraphs (1) or (2) he shall give the applicant or his solicitor (where the application for a grant is made through a solicitor) an opportunity of being heard with respect to the requirement.

(4) Every guarantee entered into by a surety for the purposes of Article 17 of the Order shall be in Form No. 1.

(5) Except where the surety is a corporation the signature of the surety on every such guarantee shall be attested by an authorised officer, commissioner for oaths or other person authorised by law to administer an oath.

(6) Unless the Master otherwise directs—

- (a) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed £500 or a corporation is a proposed surety, and in those cases one will suffice;
- (b) no person shall be accepted as a surety unless he is resident in the United Kingdom;
- (c) No officer of the Office or a branch office shall become a surety, nor in any case in which a person is solicitor for the applicant for a grant shall he or his clerk or apprentice become a surety without the leave of the Master;
- (d) the limit of the liability of the surety or sureties under a guarantee given for the purposes of Article 17 of the Order shall be the gross amount of the estate as sworn on the application for the grant;
- (e) every surety, other than a corporation, shall justify;
- (f) no corporation shall be accepted as a surety unless it has been approved by the Court.

[E.r. 38]

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### **Resealing under Colonial Probate Acts, 1892 and 1927**

39.—(1) An application under the Colonial Probates Acts, 1892 and 1927, for the resealing of probate or administration granted by the court of a country to which those Acts apply shall be made in the Office by the person to whom the grant was made or by any person authorised in writing to apply on his behalf.

(2) On any such application—

- (a) an Inland Revenue affidavit or account shall be lodged as if the application were one for a grant in Northern Ireland;
- (b) if the Master so requires, the application shall be advertised in such manner as he may direct and shall be supported by an oath sworn by the person making the application.

(3) On an application for the resealing of a grant of administration—

- (a) the Master shall not require sureties under section 4 of the Administration of Estates Act (Northern Ireland) 1971(132) as a condition of resealing the grant except where it appears to him that the grant is made to a person or for a purpose mentioned in paragraphs (a) to (f) of rule 38(1) or except where he considers that there are special circumstances making it desirable to require sureties;
- (b) rule 38(2), (3), (5) and (6) shall apply with any necessary modifications; and
- (c) a guarantee entered into by a surety for the purposes of the said section 4 shall be in Form No. 2.

(4) Except by leave of the Master, no grant shall be resealed unless it was made to such a person as is mentioned in paragraph (a) or (b) of rule 25 or to a person to whom a grant could be made under the proviso to that rule.

(5) No limited or temporary grant shall be resealed except by leave of the Master.

(6) Every grant lodged for resealing shall include a copy of any will to which the grant relates or shall be accompanied by a copy thereof certified as correct by or under the authority of the court by which the grant was made, and where the copy of the grant required to be deposited under subsection (1) of section 2 of the Colonial Probates Act, 1892(133), does not include a copy of the will, a copy thereof shall be deposited in the Office at the same time as the copy of the grant.

(7) The Master shall send notice of the resealing to the Court which made the grant.

(8) Where notice is received in the Office of the resealing of a Northern Ireland grant, notice of any amendment or revocation of the grant shall be sent to the court by which it was resealed.

[E.r. 41]

### **Application for leave to sue on guarantee**

40. An application for leave under Article 17(3) of the Order or under section 4(5) of the Administration of Estates Act (Northern Ireland) 1971 to sue a surety on a guarantee given for the purpose of Article 17 or section 4 shall, unless the Master otherwise directs under rule 55, be made by summons to the Master, and notice of the application shall in any event be served on the administrator, the surety and any co-surety.

[E.r. 41A]

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(132) 1971 c. 31 (N.I.)

(133) 1892 c. 6

### **Amendment and revocation of grant**

41. If the Master is satisfied that a grant should be amended or revoked he may make an order accordingly :

Provided that except in special circumstances no grant shall be amended or revoked under this rule except on the application or with the consent of the person to whom the grant was made.

[E.r. 42]

### **Certificate of delivery of Inland Revenue affidavit**

42. Where the deceased died before March 13, 1975, the certificate of delivery of an Inland Revenue affidavit required by section 30 of the Customs and Inland Revenue Act 1881(**134**), to be borne by every grant shall be in Form No. 3.

[E.r. 43]

### **Caveats**

43.—(1) Any person who wishes to ensure that no grant is sealed without notice to himself may enter a caveat either personally or by his solicitor in the Office or where the lodging of caveats is branch office business at the appropriate branch office.

(2) A caveat shall be in Form No. 4 and where the caveat is entered by a solicitor on the caveator's behalf, the name of the caveator shall be stated.

(3) Except as otherwise provided by this rule, a caveat shall remain in force for six months, beginning with the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.

(4) Where a caveator within the last month of a period of six months prescribed by paragraph (3) of this rule or of any additional period of six months prescribed by this paragraph, lodges at the Office or branch office in which the caveat was entered a written application for its extension, the caveat shall (except as otherwise provided by paragraphs (9) (12) and (14) of this rule) remain in force for an additional period of six months;

(a) (5) (a) The Master shall, immediately upon a caveat being lodged in the Office, send notice thereof to the appropriate circuit registrar if it is alleged that the deceased resided at the time of his death, or if he is known to have had a fixed place of abode at the time of his death, within the jurisdiction of the branch office;

(b) The circuit registrar shall, immediately upon a caveat being lodged in a branch office, send a copy thereof to the Master and shall state the day on which the same was lodged.

(6) The Master shall maintain an index of caveats entered in the Office or any branch office and on receiving an application for a grant in the Office, or a notice of an application for a grant made in a branch office he shall cause the index to be searched and shall notify the appropriate circuit registrar in the event of a caveat having been entered against the sealing of a grant for which application has been made in a branch office.

(7) The Master or circuit registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat in respect thereof :

Provided that no caveat shall affect any grant sealed on the day on which the caveat has been lodged.

(8) A caveat may be warned by the issue from the Office of a warning in Form No. 5 at the instance of any person interested (in this rule called “the person warning”) which shall state his interest and, if he claims under a will, the date of the will, and shall require the caveator to give particulars of

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any contrary interest which he may have in the estate of the deceased; and every warning or a copy thereof shall be served on the caveator.

(9) A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the Office or branch office at which it was entered and the caveat shall thereupon cease to have effect and, if it has been warned, the caveator shall forthwith give notice of withdrawal of the caveat to the person warning.

(10) A caveator having an interest contrary to that of the person warning may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time, thereafter if a certificate of non appearance has not been issued under paragraph 12 of this rule, enter an appearance in Form No. 6 in the Office and make an entry in the appropriate book, and shall forthwith thereafter serve on the person warning a copy of the form of appearance.

(11) A caveator having no interest contrary to that of the person warning but wishing to show cause against the sealing of a grant to that person may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if a certificate of non appearance has not been issued under paragraph (12) of this rule, issue and serve a summons for directions, which shall be returnable before the Master.

(12) If the time limited for appearance has expired and the caveator has not entered an appearance, the person warning may file in the Office an affidavit showing that the warning was duly served and obtain a certificate of non appearance and thereupon the caveat shall cease to have effect.

(13) Upon the commencement of a probate action the Master shall, in respect of each caveat then in force (other than a caveat entered by the plaintiff), give to the caveator notice of the commencement of the action and, upon the subsequent entry of a caveat at any time when the action is pending, shall likewise notify the caveator of the existence of the action.

(14) Unless the Master by order made on summons otherwise directs—

- (a) any caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to paragraph (9) of this rule, remain in force until an application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such proceedings, and upon such application any caveat entered by a party who had notice of the proceedings shall cease to have effect;
- (b) any caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action;
- (c) the commencement of a probate action shall, whether or not any caveat has been entered, operate to prevent the sealing of a grant (other than a grant under Article 6 of the Order) until application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such action, and upon such application any caveat entered by a party who had notice of the action, or by a caveator who was given notice under paragraph (13) of this rule, shall cease to have effect.

(15) Except with the leave of the Master, no further caveat may be entered by or on behalf of any caveator whose caveat has ceased to have effect under paragraph (12) or (14) of this rule.

(16) In this rule “grant” includes a grant made by any Court outside Northern Ireland which is produced for resealing by the High Court.

[E.r. 44]

## **Citation**

44.—(1) Every citation shall issue from the Office and shall be settled by the Master before being issued.

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(2) Every averment in a citation, and such other information as the Master may require, shall be verified by an affidavit sworn by the person issuing the citation (hereinafter called “the citor”) or, if there are two or more citors, by one of them :

Provided that the Master may in special circumstances accept an affidavit sworn by the citor's solicitor.

(3) The citor shall enter a caveat before issuing a citation.

(4) Every citation shall be served personally on the person cited unless the Master, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.

(5) Every will referred to in a citation shall be lodged in the Office or a branch office before the citation is issued, except where the will is not in the citor's possession and the Master is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may, within eight days of service of the citation upon him inclusive of the day of such service, or at any time thereafter if no application has been made by the citor under paragraph (5) of rule 45 or paragraph (2)(a) of rule 46, enter an appearance in the Office in form 5 and make an entry in the appropriate book, and shall forthwith thereafter serve on the citor a copy of the form of appearance.

[E.r. 45]

#### **Citation to accept or refuse to take a grant**

45.—(1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or of the executors of the last survivor of deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of six months from the death of the deceased :  
Provided that no citation to take a grant shall issue while proceedings as to the validity of the will are pending.

(4) A person cited who is willing to accept or take a grant may apply ex parte to the master for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may—

- (a) in the case of a citation under paragraph (1) of this rule apply to the Master for an order for a grant to himself.
- (b) in the case of a citation under paragraph (2) of this rule, apply to the Master for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased;
- (c) in the case of a citation under paragraph (3) of this rule, apply to the Master by summons (which shall be served on the person cited) for an order requiring such person to take a grant within a specified time or for a grant to himself or some other person specified in the summons.

(6) An application under the last foregoing paragraph shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

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(7) If the person cited has entered an appearance, but has not applied for a grant under paragraph (4) of this rule, or has failed to prosecute his application with reasonable diligence, the citor may—

- (a) in the case of a citation under paragraph (1) of this rule, apply by summons to the Master for an order for a grant to himself;
- (b) in the case of a citation under paragraph (2) of this rule, apply by summons to the Master for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in sub-paragraph (b) of paragraph (5) of this rule;
- (c) in the case of a citation under paragraph (3) of this rule, apply by summons to the Master for an order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons :

and the summons shall be served on the person cited.

[E.r. 46]

#### **Citation to propound a will**

46.—(1) A citation to propound a will shall be directed to the executors named in the will and to all persons interested thereunder, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.

(2) If the time limited for appearance has expired, the citor may—

- (a) in the case where no person cited has entered an appearance, apply to the Master for an order for a grant as if the will were invalid;
- (b) in the case where no person who has entered an appearance proceeds with reasonable diligence to propound the will, apply to the Master by summons (which shall be served on every person cited who has entered an appearance) for such an order as is mentioned in paragraph (a) above.

[E.r. 47]

#### **Citation to bring in a grant**

47. A citation against the person to whom probate or letters of administration, as the case may be, was or were granted requiring him to bring into and leave at the Office the probate or letters of administration, as the case may be, may be issued on the application of any person applying for the revocation or amendment of the grant or who desires to compel proof of the will in solemn form. Service out of jurisdiction of a citation under this rule is permissible but only with the leave of the Court.

#### **Address for service**

48. All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

[E.r. 48]

#### **Application for order to bring in a will or to attend for examination**

49.—(1) An application under Article 15 of the Order—

- (a) for the issue by the Master of a subpoena to bring a will or other testamentary paper into the Office shall be supported by an affidavit setting out the grounds of the application, or

(b) for an order requiring any person to bring a will or other testamentary paper into the Office shall be made by summons which must be served on the person against whom the order is sought.

(2) An application under Article 16 of the Order for an, order requiring any person to attend before the Court for examination shall be made by summons which must be served on the person against whom the order is sought.

(3) Any person against whom a subpoena is issued under the said Article 15, and who denies that the will or other testamentary paper referred to in the subpoena is in his possession or under his control may file an affidavit to that effect.

[E.r. 49]

### **Limited grants under section 1(2) of the Administration of Estates Act (Northern Ireland) 1955**

50. An application for an order for a grant under section 1(2) of the Administration of Estates Act (Northern Ireland) 1955(135) limited to part o( an estate may be made to the Master and shall be supported by an affidavit stating—

- (a) whether the application is made in respect of the real estate only or personal estate only, or real estate together with personal estate, or in respect of a trust estate only;
- (b) whether the estate of the deceased is known to be insolvent;
- (c) that the persons entitled to a grant in respect of the whole estate in priority to the applicant have been cleared off.

[E.r. 50]

### **Grants of administration under discretionary powers of court, and grant ad colligenda bona**

51. An application for an order for—

- (a) a grant of administration under Article 5 of the Order, or
- (b) a grant of administration ad colligenda bona,

may be made to the Master and shall be supported by an affidavit setting out the grounds of the application.

[E.r. 51]

### **Applications for leave to swear to death**

52. An application for leave to swear to the death of a person in whose estate a grant is sought may be made to the Master and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance effected on the life of the presumed deceased.

[E.r. 52]

### **Grants in respect of nuncupative wills and of copies of wills**

53.—(1) An application for an order admitting to proof a nuncupative will, or a will contained in a copy, a completed draft, a reconstruction or other evidence of its contents where the original will is not available, may be made to the Master :

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Provided that where a will is not available owing to its being retained in the custody of a foreign court or official, a duly authenticated copy of the will may be admitted to proof without any such order as aforesaid.

(2) The application shall be supported by an affidavit setting out the grounds of the application and by such evidence on affidavit as the applicant can adduce as to—

- (a) the due execution of the will;
- (b) its existence after the death of the testator, and
- (c) the accuracy of the copy or other evidence of the contents of the will,

together with any consents in writing to the application given by any persons not under disability who would be prejudiced by the grant

[E.r. 53]

#### **Grants durante absentia**

54. An application for an order for a grant of special administration under Article 8 of the Order where a personal representative is residing outside Northern Ireland shall be made to the Court on motion.

[E.r. 54]

#### **Power to require application to be made by summons or motion**

55. The Master may require any application to be made by summons to the Master or the Judge, or to the Court on motion.

[E.r. 60]

#### **Notice of motion**

56. The notice of a motion must issue out of the Office.

#### **Application by summons**

57.—(1) A summons must issue out of the Office.

(2) A summons must be served not less than two clear days before the day appointed for the hearing, unless the Judge or Master, at or before the hearing, dispenses with service on such terms; if any, as he may think fit.

[E.r. 60]

#### **Issue of copies of original wills and other documents**

58.—(1) Office copies of wills and other documents kept in the Office and branch offices under Article 23 of the Order will not be examined against the documents of which they purport to be copies unless so required. Every copy so required to be examined, shall be certified under the hand of the Master to be a true copy.

(2) The seal of the Court shall not be affixed to an office copy of a will or other document unless the same has been certified to be a true copy.

[E.r. 58]



### **Attendances with documents**

59. If a will or other document filed in the Office or any branch office is required to be produced by a clerk of the Office or branch office at any place application must be made for that purpose (unless the Judge or Master gives leave to the contrary) at least twenty-four hours before the clerk, in whose charge the will or other document is to be placed, will be required to set off; provided that any such will or document required for production before the Court of Appeal or any Judge of the Supreme Court sitting in Belfast shall be transmitted to the proper officer of such Court or Judge who will give a receipt therefor and return the same to the Office as soon as may be after such production. If a will or other document so filed is required to be posted to a circuit registrar application must be made for that purpose in sufficient time to allow for making and examining a copy of such will or other document to be deposited in its place.

### **Notices of applications for grants made to a branch office**

60.—(1) A circuit registrar shall send to the Office a notice of every application made in the branch office for a grant as soon as may be after the application has been made, and no grant shall be made by him until he has received from the Office a certificate that no other application appears to have been made in respect of the estate of the testator or intestate.

(2) Notices of applications for grants of probate or administration, with the will annexed, transmitted by the circuit registrar to the Office, shall contain an extract of the words of the will or codicil by which the applicant has been appointed executor, or of the words (if any) upon which he founds his claim to such administration; and shall show the day on which the application was made.

(3) Notices of application shall set forth the names and interests of all persons who would have a prior right to the applicant, and show how such prior right is cleared off. In case the persons, or any of them, have renounced, the date of his or her renunciation must be stated. If the applicant claims as the representative of another person, the date and particulars of the grant to him must appear.

(4) Where any such notice is received from any branch office the Master shall examine all notices of applications for grants received from thy other branch offices and all applications for grants made at the Office, so far as may be necessary for the purpose of ascertaining whether application for a grant in respect of the estate of the same deceased person has been made, and shall communicate with the circuit registrar as occasion may require in relation thereto.

(5) The certificate sent under paragraph (1) shall be forwarded as soon as may be to the circuit registrar, and may be issued from the Office under a stamp provided for that purpose.

(6) All notices transmitted to the Office under paragraph (1) shall be filed in the Office.

[E.r. 57]

### **List of grants made in a branch office**

61.—(1) A circuit registrar shall on the first and every other Thursday in the month transmit to the Office a list of the grants made by him and not included in a previous return, and also copies of the wills to which the grants relate certified by him to be correct under a stamp provided for the purpose.

(2) Every such list of grants furnished by the circuit registrar shall include the full name of every person in respect of whose estate a grant has been made. and the name of the county or town in which he resided.

[E.r. 57]

### **Amendment of grants in branch office**

62.—(1) No grants of probate or letters of administration shall be amended by the circuit registrar, without an order of the Judge or Master having been previously obtained. In case the name of the

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testator or intestate requires amendment notice of an application to amend must be given, and the amendment ordered is not to be made by the circuit registrar until the usual certificate on such notice has been received from the Office.

(2) Whenever in the branch office any amendment is made in a grant, or a renunciation is filed, notice of such amendment or renunciation shall, without delay, be forwarded by the circuit registrar to the Master.

(3) Where any alteration is made in a grant which was issued from a branch office, or where any such grant is revoked, and the volume of the printed calendar containing the entry of such grant has been forwarded to the circuit registrar, notice of such alteration or revocation shall without delay be forwarded by the Master to the circuit registrar.

### **Order of priority for grant where the deceased died before the 1st day of January 1956**

63. Where the deceased died before the 1st January 1956, the right to a grant shall, subject to any statutory provision, be determined by the principles and rules in accordance with which the Court would have acted at the date of the death.

[E.r. 67]

## **ORDER 98**

### **THE LEGITIMACY DECLARATION ACT (IRELAND) 1868 AND THE LEGITIMACY ACT (NORTHERN IRELAND) 1928**

#### **Interpretation**

1. In this Order unless the context otherwise requires—

“the Judge” means the Judge for the time being to whom the business of the Family Division is assigned under section 17 of the Act and any judge of the High Court exercising jurisdiction in matrimonial causes and matters;

“Master” means the Master of the Office;

“Office” means the Probate and Matrimonial Office of the Family Division;

#### **Heading of petition**

2. A petition by which proceedings are begun under the said Acts or either of them shall be headed :—

“In the High Court of Justice in Northern Ireland

Family Division

Probate and Matrimonial Office”

and in the matter of the relevant Act and shall be addressed to Her Majesty's High Court of Justice in Northern Ireland.

#### **Contents of petition**

3. The petition shall, in addition to stating the grounds on which the petitioner relies; set out the date and place of birth of the petitioner and the maiden name of his mother and, if the petitioner is known by a name other than that which appears in the certificate of his birth, that fact shall be stated in the petition and in any decree made thereon.

### **Affidavit in support of petition**

4.—(1) The petition shall be supported by an affidavit by the petitioner verifying the petition and giving particulars of every person whose interest may be affected by the proceedings and his relationship to the petitioner;

Provided that if the petitioner is under the age of 17 the affidavit shall unless otherwise directed, be made by his next friend.

(2) An affidavit for the purpose of paragraph (1) may contain statements of information and belief with the sources and grounds thereof.

### **Notice of filing of petition to be given to the Attorney General**

5. On filing the petition notice of filing shall be given by the petitioner to the Crown Solicitor on behalf of the Attorney General who may enter an appearance to the petition within 14 days from such notice.

### **Directions as to persons to be made respondents to the petition**

6.—(1) After the expiration of the time limited for appearance by the Attorney General, the petitioner shall issue and serve upon the Crown Solicitor an application for directions as to the persons, other than the Attorney General, who are to be made respondents to the petition.

(2) Such application shall be supported by an affidavit setting out particulars of all persons whose interests may be affected by the legitimation of the petitioner, and their relationship to the petitioner.

### **Service of petition on respondent**

7. The petitioner shall serve personally or by post every respondent other than the Attorney General with a copy of the petition indorsed with a notice to appear in accordance with Form No. 48 in Appendix. A.

### **Appearance by respondent**

8. A respondent may enter an appearance within the time limited by the notice indorsed on the petition.

### **Answer by respondent**

9.—(1) A respondent who has entered an appearance may within 14 days thereafter file an answer to the petition.

(2) The respondent shall within four days of filing an answer deliver a copy of it to the petitioner and the Crown Solicitor and any other party to the proceedings.

### **Answer by Attorney General**

10. The Attorney General shall within 21 days after the order for directions has been made under rule 6 file his answer to the petition and deliver a copy thereof to the petitioner and any other party to the proceedings.

### **Consolidation of suits**

11. Where it appears that more than one petition has been filed on behalf of petitioners claiming to be children of the same father and mother, the Attorney General may, on giving notice to the

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petitioner in each suit which it is sought to consolidate, apply at any time after he has entered an appearance for an order that the suits be consolidated.

#### **Master's certificate before hearing**

12. The petitioner shall before setting down the cause for hearing, refer the proceedings in the cause to the Master for his certificate that the pleadings and proceedings are in order.

#### **Setting down for hearing**

13.—(1) The petitioner, after the Master's certificate has been obtained, shall set the cause down for hearing and within 4 days of having done so, shall give to the Crown Solicitor on behalf of the Attorney General and to each party in the cause who has entered an appearance notice of his having done so.

(2) Save with the consent of all parties or by leave of the Judge no cause shall be placed in the list for hearing until after the expiration of 10 days from the date on which the notice of setting down is given.

(3) In order to set a cause down for hearing the party setting it down must deliver to the cause clerk in the Office one bundle for the use of the Judge consisting of one indexed copy of the following documents:—

- (a) the petition,
- (b) the pleadings,
- (c) affidavit of service,
- (d) interlocutory orders,
- (e) the Master's certificate under rule 32, and
- (f) the requisite legal aid documents,

bound up in proper chronological order and stamped denoting the fee payable and have endorsed thereon the names and addresses of the solicitors for the parties.

#### **Mode of making applications**

14. Unless this order otherwise provides every application under this order shall be made to the Master by summons.

## **ORDER 99**

### **INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) (NORTHERN IRELAND) ORDER 1979**

#### **Interpretation**

1. In this Order “the Order” means the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979(136) and an Article referred to by number means the Article so numbered in that Order.

[E.r. 1]

### **Assignment to Chancery Division**

2. Proceedings in the High Court under the Order shall be assigned to the Chancery Division.

[E.r. 2]

### **Application for financial provision**

3.—(1) Any originating summons by which an application under Article 3 is made shall be issued out of the Chancery Office.

(2) No appearance need be entered to the summons.

(3) An affidavit shall be filed by the applicant in support of the summons, exhibiting an official copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof, and a copy of the affidavit shall be served on every defendant with the summons.

[E.r. 3]

### **Powers of Court as to parties**

4.—(1) Without prejudice to its powers under Order 15, the Court may at any stage of proceedings under the Order direct that any person be added as a party to the proceedings or that notice of the proceedings be served on any person.

(2) Order 15, rule 13', shall apply to proceedings under the Order as it applies to the proceedings mentioned in paragraph (1) of that rule.

[E.r. 4]

### **Affidavit in answer**

5.—(1) A defendant to an application under Article 3 who is a personal representative of the deceased shall and any other defendant may, within 21 days after service of the summons on him, inclusive of the day of service, file in the Chancery Office an affidavit in answer to the application.

(2) The affidavit filed by a personal representative pursuant to paragraph (1) shall state to the best of the deponent's ability—

- (a) full particulars of the value of the deceased's net estate, as defined by Article 2;
- (b) the person or classes of persons beneficially interested in the estate, giving the names and (in the case of those who are not already parties) the addresses of all living beneficiaries, and the value of their interests so far as ascertained;
- (c) if such be the case, that any living beneficiary (naming him) is a minor or a patient within the meaning of Order 80, rule 1, and
- (d) any facts known to the deponent which might affect the exercise of the Court's powers under the Order.

(3) Every defendant who files an affidavit shall at the same time serve a copy on the plaintiff and on every other defendant who is not represented by the same solicitor.

[E.r. 5]

### **Separate representation**

6. Where an application under Article 3 is made jointly by two or more applicants and the originating summons is accordingly issued by one solicitor on behalf of all of them, they may, if they have conflicting interests, appear on any hearing of the summons by separate solicitors or counsel or in person; and where at any stage of the proceedings it appears to the Court that one of the applicants is not but ought to be separately represented, the Court may adjourn the proceedings until he is.

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[E.r. 6]

#### **Endorsement of memorandum on grant**

7. On the hearing of an application under Article 3 the personal representative shall produce to the Court the grant of representation to the deceased's estate and, if an order is made under the Order, the grant shall remain in the custody of the Court until a memorandum of the order has been endorsed on or permanently annexed to the grant in accordance with Article 21.

[E.r. 7]

#### **Disposal of proceedings in chambers**

8. Any proceedings under the Order may, if the Court so directs, be disposed of in chambers.

[E.r. 8]

#### **Subsequent applications in proceedings under Article 3**

9. Where an order has been made on an application under Article 3, any subsequent application under the Order, whether made by a party to the proceedings or by any other person, shall be made by summons in those proceedings.

[E.r. 9]

#### **Remittal to county court**

10.—(1) Where an application to which Article 24(1) relates is within the jurisdiction of a county court, the Court may, if the parties consent or it appears to the Court to be desirable, order the remittal of the application to such county court as appears to the Court to be most convenient to the parties.

(2) An order under paragraph (1) may be made by the Court of its own motion or on the application of any party, but before making an order of its own motion otherwise than by consent the Court shall give the parties an opportunity of being heard on the question of remittal and for that purpose the Master may give the parties notice of a date, time and place at which the question will be considered.

[E.r. 11]

## **ORDER 100**

### **THE TRADE MARKS ACT 1938**

#### **Assignment to Chancery Division**

1. Proceedings in the High Court under the Trade Marks Act 1938(137) shall be assigned to the Chancery Division.

[E.r. 1]

#### **Appeals and applications under the Trade Marks Act 1938**

2.—(1) Subject to rule 3, every application to the High Court under the said Act of 1938 must be begun by originating motion.

(2) Notice of motion by which any such application is made must be served on the Comptroller-General of Patents, Designs and Trade Marks (in this Order referred to as “the Comptroller”).

(3) Where the Comptroller refers to the High Court an application under the said Act of 1938 made to him, and where the Department of Trade refer to that Court an appeal to the Department under that Act, then, unless within one month after receiving notification of the decision to refer, the applicant or the appellant, as the case may be, makes to that Court the application or appeal referred, he shall be deemed to have abandoned it.

(4) The period prescribed by Order 55, rule 14(2), or by paragraph (3) in relation to an application or appeal to which that paragraph applies may be extended by the Comptroller on the application of any party interested and may be so extended although the application is not made until after the expiration of that period, but the foregoing provision shall not be taken to affect the power of the Court under Order 3, rule 5, to extend that period.

(5) Where under subsection (6) of section 17, or subsection (9) of section 18, of the said Act of 1938 an appellant becomes entitled and intends to withdraw his application which is the subject matter of the appeal, he must give notice of his intention to the Comptroller and to any other party to the appeal within one month after the Court has given leave under the said subsection (6) or the said subsection (9), as the case may be, for further grounds of objection to be taken.

[E.r. 2]

### **Proceedings for infringement of registered trade mark; validity of registration disputed**

3.—(1) Where in any proceedings a claim is made for relief for infringement of the right to the use of a registered trade mark, the party against whom the claim is made may in his defence put in issue the validity of the registration of that trade mark or may counterclaim for an order that the register of trade marks be rectified by cancelling or varying the relevant entry or may do both those things.

(2) A party to any such proceedings who in his pleading (whether a defence or counterclaim) disputes the validity of the registration of a registered trade mark must serve with the pleading particulars of the objections to the validity of the registration on which he relies in support of the allegation of invalidity.

(3) A party to any such proceedings who counterclaims for an order that the register of trade marks be rectified must serve on the Comptroller a copy of the counterclaim together with a copy of the particulars mentioned in paragraph (2); and the Comptroller shall be entitled to take such part in the proceedings as he may think fit but need not serve a defence or other pleading unless ordered to do so by the Court.

[E.r. 3]

## **ORDER 101**

### **THE PENSIONS APPEAL TRIBUNALS ACT 1943**

#### **Interpretation**

1. In this Order—  
“the Court” means the Court of Appeal.

#### **Application for leave to appeal**

2.—(1) An application to the Court for leave to appeal against the decision of a Pensions Appeal Tribunal may not be made unless an application for such leave was made to the Tribunal and was refused and must be made within 28 days after the date of the Tribunal's refusal.

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(2) The application to the Court, which may be made ex parte, must be made by filing in the Central Office a written statement of—

- (a) the name and description of the applicant,
- (b) the point of law as respects which the applicant alleges that the Tribunal's decision was erroneous, and
- (c) the date of the Tribunal's decision refusing leave to appeal.

(3) If the application is made with the consent of the other party to the proceedings before the Tribunal, that fact shall be included in the statement.

(4) On the making of the application the proper officer shall request the chairman of the Tribunal to give the Court a written statement of the reasons for the Tribunal's decision to refuse leave to appeal, and within 7 days after receiving the request the chairman shall give the Court such a statement.

(5) The Court may determine the application without a hearing or may direct that the application be set down for hearing.

(6) Where the application is determined without a hearing, a copy of the Court's order shall be sent from the Central Office to the applicant and to the other party to the proceedings before the Tribunal; and where the application is to be set down for hearing, notice of the day and time fixed for the hearing shall be sent from that Office to the applicant.

[E.r. 3]

### **Appeal**

3.—(1) Without prejudice to Order 59, rule 3(2), the notice of the originating motion by which an appeal against the decision of a Pensions Appeal Tribunal is brought must state the question of law on which the appeal is brought, the date on which leave to appeal was granted and whether such leave was granted by the judge or the Tribunal.

(2) Order 59, rules 5 and 13, shall not apply in relation to such an appeal, but notice must be served and the appeal entered within 28 days after leave to appeal was granted.

(3) Within 28 days after service of the notice of motion on him, the chairman of the Tribunal must state a case setting out the facts on which the decision appealed against was based and must file the case in the Central Office and serve a copy thereof on the appellant and on the respondent.

(4) At the hearing of the appeal the Court may order the case to be returned to the chairman for amendment.

(5) Order 59, rule 10(2), shall not apply in relation to the appeal.

(6) A copy of the Court's order on the appeal must be sent by the proper officer to the appellant, the respondent and the chairman of the Tribunal.

[E.r. 4]

## **ORDER 102**

### **THE COMPANIES ACTS (NORTHERN IRELAND) 1960 AND 1978**

#### **Definitions**

1. In this Order—



“the Act” means the Companies Act (Northern Ireland) 1960(**138**);

“the Order of 1978” means the Companies (Northern Ireland) Order 1978(**139**).

“the Court”, without prejudice to Order 1, rule 4(2), includes the Master (Bankruptcy).

[E.r. 1]

### **Applications to be made by originating summons**

2.—(1) Except in the case of the applications mentioned in rules 3 and 4 and applications made in proceedings relating to the winding up of companies, every application under the Act or the Order of 1978 must, in accordance with Order 5, rule 3, be made by originating summons.

(2) No appearance need be entered to an originating summons under this rule unless the application made by the summons is—

- (a) an application under section 199 of the Act for an order to make provision for all or any of the matters mentioned in subsection (1) of that section where an order sanctioning the compromise or arrangement to which the application relates has previously been made, or
- (b) an application under section 326 of the Act for an order directing a receiver or manager of a company to make good any such default as is mentioned in subsection (1) of that section, or
- (c) an application under section 376 of the Act for an order directing a company and any officer thereof to make good any such default as is mentioned in that section, or

(3) An application under section 161(4) or 389 of the Act may be made by ex parte originating summons.

[E.r. 2]

### **Applications to be made by originating motion**

3. The following applications under the Act must be made by originating motion, namely, applications—

- (a) under section 29 for an order that a company be relieved from the consequences of default in complying with conditions constituting the company a private company,
- (b) under section 52(4) for an order extending the time for delivery to the registrar of companies of any documents required by that section to be delivered,
- (c) under section 159 for an order declaring that the affairs of a company ought to be investigated by an inspector appointed by the Department of Commerce for Northern Ireland,
- (d) under section 161(3) for an inquiry into any such case as is therein mentioned, and
- (e) under section 315 for an order declaring a dissolution of a company which has not been wound up to have been void.

[E.r. 4]

### **Applications to be made by petition**

4. The following applications under the Act must be made by petition, namely, applications—

- (a) under section 5 to cancel the alteration of a company's objects,

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(138) 1960 (N.I.) c. 22

(139) S.I. 1978 No. 1042 (N.I. 12)

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- (b) under section 23 to cancel the alteration of a condition contained in a company's memorandum,
- (c) under section 56 to confirm a reduction of the share premium account of a company,
- (d) under section 57 to sanction the issue by a company of shares at a discount,
- (e) under section 58 to confirm a reduction of the capital redemption reserve fund of a company,
- (f) under section 67 to confirm a reduction of the share capital of a company,
- (g) under section 72 to cancel any variation or abrogation of the rights attached to any class of shares in a company,
- (h) under section 197 to sanction a compromise or arrangement between a company and its creditors or any class of them or between a company and its members or any class of them,
- (i) under section 316(8) for an order restoring the name of a company to the register where the application is made in conjunction with an application for the winding up of the company,
- (j) under section 345 to cancel the alteration of the form of a company's constitution, and
- (k) under section 394(2) for relief from liability of an officer of a company or a person employed by a company as auditor.

[E.r. 5]

#### **Assignment, commencement and entitlement of proceedings; filing of affidavits**

- 5.—(1) All proceedings to which this Order relates shall be assigned to the Chancery Division.
- (2) Every originating summons, notice of originating motion and petition by which any such proceedings are begun must be issued out of or presented in the Bankruptcy and Companies Office.
- (3) Every affidavit made in connection with any such proceedings must be filed in the Bankruptcy and Companies Office.
- (4) Every originating summons, notice of originating motion and petition by which any such proceedings are begun and all affidavits, notices and other documents in those proceedings must be entitled in the matter of the company in question and in those proceedings must be entitled in the matter of the company in question and in the matter of the Companies Acts, (Northern Ireland) 1960 and 1978.
- (5) The originating summons by which an application for leave under section 179(1) of the Act is made must be entitled in the matter of the company in relation to which the plaintiff was convicted or was guilty of such an offence or of such conduct as is mentioned in the said section 179(1) and in the matter of the Companies Acts (Northern Ireland) 1960 and 1978.

[E.r. 6]

#### **Summons for directions**

- 6.—(1) After presentation of a petition by which any such application as is mentioned in rule 4 is made, the petitioner, except where his application is one of those mentioned in paragraph (2), must take out a summons for directions under this rule.
- (2) The applications referred to in, paragraph (1) are—
- (a) an application under section 57 of the Act to sanction the issue by a company of shares at a discount,
  - (b) an application under section 197 of the Act to sanction a compromise or arrangement unless there is included in the petition for such sanction an application for an order under section 199 of the Act, and

(c) an application under section 316(8) of the Act for an order restoring the name of a company to the register.

(3) On the hearing of the summons the Court may by order give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit including, in particular, directions for the publication of notices and the making of any inquiry.

(4) Where the application made by the petition is to confirm a reduction of the share capital, the share premium account, or the capital redemption reserve fund, of a company, then, without prejudice to the generality of paragraph (3), the Court may give directions —

- (a) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims;
- (b) as to the proceedings to be taken for settling the list of creditors entitled to object to the reduction and fixing the date by reference to which the list is to be made;

and the power of the Court under section 67(3) of the Act to direct that section 67(2) thereof shall not apply as regards any class or classes of creditors may be exercised on any hearing of the summons.

(5) Rules 7 to 12 shall have effect subject to any directions given by the Court under this rule.

[E.r. 7]

#### **Inquiry as to debts: company to make list of creditors**

7.—(1) Where under rule 6 the Court orders such an inquiry as is mentioned in paragraph (4) thereof, the company in question must, within 7 days after the making of the order, file an affidavit made by an officer of the company competent to make it verifying a list containing—

- (a) the name and address of every creditor entitled to any debt or claim to which the inquiry extends,
- (b) the amount due to each creditor in respect of such debt or claim or, in the case of a debt or claim which is subject to any contingency or sounds only in damages or for some other reason does not bear a certain value, a just estimate of the value thereof, and
- (c) the total of those amounts and values.

(2) The deponent must state in the affidavit his belief that at the date fixed by the Court as the date by reference to which the list is to be made there is no debt or claim which, if that date were the commencement of the winding up of the company, would be admissibly in proof against the company, other than the debts or claims set out in the list and any debts or claims to which the inquiry does not extend, and must also state his means of knowledge of the matters deposed to.

(3) The list must be left at the Bankruptcy and Companies Office not later than one day after the affidavit is filed.

[E.r. 8]

#### **Inspection of list of creditors**

8.—(1) Copies of the list made under rule 7 with the omission, unless the Court otherwise directs, of the amount due to each creditor and the estimated value of any debt or claim to which any creditor is entitled, shall be kept at the registered office of the company and at the office of that company's solicitor.

(2) Any person shall be entitled during ordinary business hours, on payment of a fee of 50 pence, to inspect the said list at any such office and to take extracts therefrom.

[E.r. 9]

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

### **Notice to creditors**

9. Within 7 days after filing the affidavit required by rule 7 the company must send by post to each creditor named in the list exhibited to the affidavit, at his last known address, a notice stating—

- (a) the amount of the reduction sought to be confirmed,
- (b) the effect of the order directing an inquiry as to, debts and claims,
- (c) the amount or value specified in the list as due or estimated to be due to that creditor, and
- (d) the time fixed by the Court within which, if he claims to be entitled to a larger amount, he must send particulars of his debt or claim and the name and address of his solicitor, if any, to the company's solicitor.

[E.r. 10]

### **Advertisement of petition and list of creditors**

10. After filing the affidavit required by rule 7 the company must insert, in such newspapers and at such times as the Court directs, a notice stating—

- (a) the date of presentation of the petition and the amount of the reduction thereby sought to be confirmed,
- (b) the inquiry ordered by the Court under rule 6,
- (c) the places where the list of creditors may be inspected in accordance with rule 8, and
- (d) the time within which any creditor not named in the list who claims to be entitled to any debt or claim to which the inquiry extends must send his name and address, the name and address of his solicitor, if any, and particulars of his debt or claim to the company's solicitor.

[E.r. 11]

### **Affidavit as to claims made by creditors**

11. Within such time as the Court directs the company must file an affidavit made by the company's solicitor and an officer of the company competent to make it—

- (a) proving service of the notices mentioned in rule 9 and advertisement of the notice mentioned in rule 10,
- (b) verifying a list containing the names and addresses of the persons (if any) who in pursuance of such notices sent in particulars of debts or claims, specifying the amount of each debt or claim,
- (c) distinguishing in such list those debts or claims which are wholly, or as to any and what part thereof, admitted by the company, disputed by the company or alleged by the company to be outside the scope of the inquiry, and
- (d) stating which of the persons named in the list made under rule 7, and which of the persons named in the list made under this rule, have been paid or consent to the reduction sought to be confirmed.

[E.r. 12]

### **Adjudication of disputed claims**

12. If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim or in respect of the full amount claimed by him in respect of any debt or claim, then, unless the company is willing to secure payment of that debt or claim by appropriating

the full amount of the debt or claim, the company must, if the Court so directs, send to that person by post at his last known address a notice requiring him—

- (a) within such time as may be specified in the notice, being not less than 4 clear days after service thereof, to file an affidavit proving his debt or claim or, as the case may be, so much thereof as is not admitted by the company, and
- (b) to attend the adjudication of his debt or claim at the place and time specified in the notice, being the time appointed by the Court for the adjudication of debts and claims.

[E.r. 13]

### **Certifying lists of creditors entitled to object to reduction**

13. The list of creditors entitled to object to such reduction as is mentioned in rule 6(4), as settled by the Court under section 67(2) of the Act, shall be certified and filed by the Master (Bankruptcy) and his certificate shall—

- (a) specify the debts or claims (if any) disallowed by the Court,
- (b) distinguish the debts or claims (if any) the full amount of which is admitted by the company, the debts or claims (if any) the full amount of which, though not admitted by the company, the company is willing to appropriate, the debts or claims (if any) the amount of which has been fixed by adjudication of the Court under section 67(2) of the Act and other debts or claims;
- (c) specify the total amount of the debts or claims payment of which has been secured by appropriation under the said section 67(2);
- (d) show which creditors consent to the reduction and the total amount of their debts or claims;
- (e) specify the creditors who sought to prove their debts or claims under rule 12 and state which of such debts or claims were allowed.

[E.r. 14]

### **Evidence of consent of creditor**

14. The consent of a creditor to such reduction as is mentioned in rule 6(4) may be proved in such manner as the Court thinks sufficient.

[E.r. 15]

### **Time, etc. of hearing of petition for confirmation or reduction**

15.—(1) A petition for the confirmation of any such reduction as is mentioned in rule 6(4) shall not, where the Court has directed an inquiry pursuant to that rule, be heard before the expiration of at least 8 clear days after the filing of the certificate mentioned in rule 13.

(2) Before the hearing of such a petition, a notice specifying the day appointed for the hearing must be published at such times and in such newspapers as the Court may direct.

[E.r. 16]

### **Restriction on taking effect of order under section 57 of the Act**

16. Unless the Court otherwise directs, an order under section 57 of the Act sanctioning the issue of shares at a discount shall direct that an office copy of the order be delivered to the registrar of companies within 10 days after the making of the order or such extended time as the Court may allow and that the order shall not take effect until such copy has been so delivered.

[E.r. 17]

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## ORDER 103

### THE PATENTS ACTS 1949 TO 1961

#### Definitions

1. In this Order—

“the Act” means the Patents Act 1949(140);

“the Comptroller” means the Comptroller-General of Patents, Designs and Trade Marks;

“the Crown Solicitor” means the Crown Solicitor for Northern Ireland;

“the Journal” means the Official Journal (Patents).

(2) References this Order to an order under section 24 of the Act include references to an order under that section on an application made by virtue of section 25 of the Act.

[E.r. 1]

#### Assignment of proceedings

2. All proceedings in the High Court under the Patents Acts 1949 to 1961, shall be assigned to the Chancery Division.

[E.r. 2]

#### Advertisement of petition for extension of patent under section 23 of the Act

3.—(1) A person intending to apply for an order under section 23 of the Act extending the term of a patent must insert an advertisement giving notice of his intention once in an appropriate trade paper, and once in a newspaper circulating throughout the United Kingdom.

(2) When the applicant sends the advertisement to an appropriate trade paper for insertion therein; he must send a copy of the advertisement to the Comptroller who shall thereupon cause the advertisement to be inserted in two successive issues of the Journal.

(3) The advertisement must state—

(a) the section of the Act under which the petition is to be presented;

(b) the object of the petition;

(c) the number, the name of the grantee and of the patentee, if different, and the title of the patent in question;

(d) the day, being a day fixed for the purpose and not earlier than 8 weeks after the publication of the advertisement for the second time in the Journal, on which the applicant intends to apply to the Court for directions fixing the date of the hearing of the petition and other directions;

(e) that notices of opposition to the petition must be lodged at the Chancery Office not less than 7 days before the day on which the applicant intends to apply to the Court as aforesaid;

(f) the applicant's address for service within the United Kingdom.

(4) In this rule “appropriate trade paper” means a newspaper or other periodical published in the United Kingdom which is appropriate to the art to which the patent in question relates.

[E.r. 3]

### **Presentation of petition, etc.**

4.—(1) A petition under section 23 of the Act must be presented after the publication of all advertisements required by rule 3 but within 8 weeks from the date on which the first of those advertisements is published.

(2) The Comptroller shall be made respondent to the petition.

(3) The petition shall be made returnable for the day stated in the advertisement as that on which the petitioner intends to apply to the Court for directions.

(4) The petition must be accompanied by an affidavit or affidavits proving compliance with rule 3.

(5) At the time when the petition is presented the petitioner must serve on the Crown Solicitor 3 copies of the petition and of every affidavit accompanying it under paragraph (4).

[E.r. 4]

### **Notice of intention to oppose petition under section 23**

5.—(1) Any person who intends to oppose the making of an order under section 23 of the Act, or to claim the inclusion therein of any restrictions, conditions or provisions, must lodge notice of his intention in the Chancery Office not less than 7 days before the day named in the petitioner's advertisements as that on which he intends to apply to the Court for directions and at the same time serve a copy of the notice on the petitioner and 3 copies on the Crown Solicitor.

The notice must state an address for service within the United Kingdom of the person giving the notice.

(2) A petitioner on whom a notice under paragraph (1) is served must forthwith serve a copy of the petition on the person by whom the notice was served.

(3) A person who has under paragraph (1) served notice of his intention to oppose a petition under the said section 23 shall be entitled to be heard on the petitioner's application for directions.

[E.r. 5]

### **Directions by Court in proceedings by petition under section 23**

6.—(1) On the hearing, on the date fixed for the purpose, of the petitioner's application for directions in proceedings for an order under section 23 of the Act, or a subsequent hearing, the Court shall give such directions for the conduct of the proceedings as it thinks necessary or expedient and, without prejudice to the generality of the foregoing provision, it shall—

(a) specify the period within which each person by whom notice has been served under rule 5(1) must serve particulars of the objections on which he intends to rely;

(b) give directions as to the manner in which the evidence (including any accounts of expenditure and receipts relating to the petition) shall be given at the hearing of the petition and, if the evidence is to be given by affidavit, specify the period within which the affidavit must be filed;

(c) fix the date of hearing of the petition.

(2) Where the petition includes an application for extension of the time allowed by subsection (2) of the said section 23, the Court may, on the application of the petitioner made on the hearing of his application for directions under this rule, and on such terms as to costs or otherwise as it thinks just, give directions for the determination before the hearing of the petition of the application for such leave, and where it does so, it shall give directions as to the manner in which the evidence shall be given at the hearing of the application and fix the date of the hearing.

[E.r. 6]

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### **Lodging of accounts, particulars of objections, etc.**

7.—(1) Where directions are given under rule 6(1)(a) for the service of particulars of objections to a petition under section 23 of the Act, the person opposing the petition must serve one copy of the particulars on the petitioner and 3 copies on the Crown Solicitor.

(2) The petitioner and every person by whom notice has been served under rule 5(1) shall serve on the Crown Solicitor 3 copies of any affidavit, and as far as practicable any exhibits thereto on which he intends to rely at the hearing of the petition.

(3) On receiving notice in that behalf, the petitioner must give to the Crown Solicitor, or a person deputed by him for the purpose, reasonable facilities for inspecting and taking extracts from the books of account by which the petitioner proposes to verify the accounts mentioned in rule 6(1)(b) or from which those accounts have been derived.

(4) Subject to rule 14, a person who fails to comply with paragraph (1) or the directions referred to therein shall be deemed to have abandoned his opposition to the petition.

(5) A person opposing a petition under the said section 23 shall not be entitled on the hearing of the petition to rely on any ground of objection not specified in his particulars of objection.

[E.r. 7]

### **Setting down petition under section 23**

8.—(1) A petition under section 23 of the Act shall be set down for hearing not less than 7 days before the date fixed for the hearing but before it is set down a certificate signed by the petitioner or his solicitor certifying that copies of the petition and notice of the said date have been served on every person opposing the petition and on the Crown Solicitor must be lodged in the Chancery Office together with a bundle consisting of one copy of each of the documents to be used at the hearing arranged in the proper chronological order on numbered pages.

(2) Unless the Court otherwise directs, the petition shall be set down in the same manner as a witness action.

[E.r. 8]

### **Application by petition for extension of patent under section 24 of the Act**

9.—(1) Rules 3 to 8 shall, with the necessary modifications, apply in relation to an application to the High Court by petition for an order under section 24 of the Act extending the term of a patent.

(2) If any person wishes to apply both for an order under section 23 of the Act and for an order under section 24 thereof, he may apply for both orders by the same petition, and rules 3 to 8 shall, with the necessary modifications, apply in relation to the application.

[E.r. 9]

### **Application by summons for extension of patent under section 24**

10.—(1) Where an application to the High Court for an order under section 24 of the Act extending the term of a patent is made by originating summons, the Comptroller shall be made defendant to the summons and the summons must be served on the Crown Solicitor.

(2) Not less than 7 days before the day fixed under Order 28, rule 2, for the hearing of the summons the plaintiff must file an affidavit of the facts on which the plaintiff relies, and serve 3 copies on the Crown Solicitor.

[E.r. 10]



### **Advertisement of application for extension of patent under section 24**

11.—(1) On the first or any adjourned hearing of an originating summons for extension of the term of a patent, the Court shall give directions for advertisement of the application for extension and shall adjourn the hearing to a specified day (in this rule and rules 12 and 13 referred to as “the appointed day”) fixed in accordance with paragraph (5).

(2) The advertisement required by this rule shall, unless the Court otherwise directs be inserted at least twice in the Journal, and before insertion its contents shall be approved by the Court.

(3) Subject to any directions given by the Court, the advertisement must state—

- (a) the section of the Act under which the originating summons has been issued;
- (b) the object of the originating summons;
- (c) the number, the name of the grantee and of the patentee if different, and the title of the patent in question;
- (d) the appointed day;
- (e) that notices of objections to the summons must be lodged in the judge's chambers not less than 7 days before the appointed day;
- (f) the plaintiff's address for service within the United Kingdom.

(4) Within 3 days after the advertisement has been approved by the Court, the plaintiff must serve a copy thereof on the Comptroller, and, subject to any directions of the Court under paragraph (2), the Comptroller shall thereupon cause the advertisement to be inserted in two successive issues of the Journal.

(5) The appointed day shall be a day not less than 4 weeks after the estimated date of publication of the advertisement for the first time in the Journal.

(6) Except with the leave of the Court, no affidavit shall be filed by the plaintiff between the publication of the advertisement for the first time in the Journal and the appointed day.

[E.r. 11]

### **Opposition to summons under section 24**

12.—(1) Any person who intends to oppose the making (on application by originating summons) of an order under section 24 of the Act, or to claim the inclusion therein of any restrictions, conditions or provisions, must, not less than 7 days before the appointed day, lodge notice of his intention in the Chancery Office and at the same time serve a copy of the notice on the plaintiff and 3 copies on the Crown Solicitor.

The notice must state an address for service within the United Kingdom of the person giving the notice.

(2) A plaintiff on whom a notice under paragraph (1) is served must forthwith serve a copy of the originating summons and of any supporting affidavit filed by him on the person by whom the notice was served.

[E.r. 12]

### **Directions by Court**

13. On the hearing on the appointed day or a subsequent hearing the Court shall give directions for the service of particulars of objections by any person who has lodged a notice under rule 12(1) and for the filing of any affidavits and as to further conduct of the proceedings.

[E.r. 13]

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### **Power to dispense with procedural requirements**

14. The Court may, on sufficient reason being shown for doing so, excuse an applicant for an order under section 23 or 24 of the Act and any person opposing the application from compliance with any obligation imposed on him by rule 3, 4, 5, 6, 7, 8, 10, 11 or 12.

[E.r. 14]

### **Provisions where Comptroller appears on hearing**

15. Where the Comptroller elects, or is required by the Court, to appear on the hearing of an application under section 23 or 24 of the Act, he shall not be required to give notice of the grounds of any objection he may think fit to take or of any evidence he may think fit to submit to the Court, but he may give the applicant written notice before the hearing of any observations on the applicant's petition or originating summons, as the case may be, and on the applicant's evidence and accounts which he may think fit to make at the hearing.

[E.r. 15]

### **Reference to Court of application to Comptroller under section 24**

16.—(1) Where an application for an order under section 24 of the Act, is made to the Comptroller and the Comptroller decides to refer the application for decision by the Court, he shall give notice of his decision to the applicant and to any person opposing the making of the order or claiming the inclusion therein of any restrictions, conditions or provisions.

(2) Within 28 days after receipt of such notice the applicant may apply by originating motion for an order under the said section 24 and notice of the motion must be served on the Crown Solicitor and on any such person as is referred to in paragraph (1).

The applicant must also serve on the said solicitor 3 copies of any evidence filed in support of or in opposition to the application.

(3) An applicant who fails to serve notice of the motion in accordance with paragraph (2) shall be deemed to have abandoned his application.

(4) Within 14 days after service of notice of the motion on the Crown Solicitor the Comptroller shall send his file of the proceedings in the matter to the Master together with a statement to the Court of his reasons for referring the application to the Court.

(5) Subject to any directions given by the Court, the procedure on an application for an order under the said section 24 referred to the Court by the Comptroller shall be the same as on an application for such an order made to the Court by originating summons and rules 11 to 15 shall, so far as applicable, apply with the necessary adaptations.

[E.r. 16]

## **ORDER 104**

THE PATENTS ACTS 1949 TO 1961 AND 1977;  
THE REGISTERED DESIGNS ACTS 1949 to 1971;  
THE DEFENCE CONTRACTS ACT 1958

### **Definitions**

1. In this Order—

- “the 1949 Act” means the Patents Act 1949(141);
- “the 1977 Act” means the Patents Act 1977(142);
- “the Comptroller” means the Comptroller-General of Patents, Designs and Trade Marks;
- “existing patent” means a patent mentioned in section 127(2)(a) or (c;) of the 1977 Act;
- “the Journal” means the journal published pursuant to rules made under section 123(6) of the 1977 Act;
- “1977 Act patent” means a patent under the 1977 Act;
- “patent” means an existing patent or a 1977 Act patent.

[E.r. 1]

### **Assignment of proceedings**

2. All proceedings in the High Court under the Patents Acts 1949 to 1961 and 1977, the Registered Designs Acts 1949 to 1961 and the Defence Contracts Act 1958(143), and all proceedings for the determination of a question or the making of a declaration relating to a patent under the inherent jurisdiction of the High Court, shall be assigned to the Chancery Division.

[E.r. 2]

### **Application for leave to amend specification under section 30 of the 1949 Act or section 75 of the 1977 Act**

3.—(1) A patentee or the proprietor of a patent intending to apply under section 30 of the 1949 Act or under section 75 of the 1977 Act for leave to amend his specification must give notice of his intention to the Comptroller accompanied by a copy of an advertisement—

- (a) identifying the proceedings pending before the Court in which it is intended to apply for such leave;
- (b) giving particulars of the amendment sought;
- (c) stating the applicant's address for service within the United Kingdom, and
- (d) stating that any person intending to oppose the amendment who is not a party to the proceedings must within 28 days after the appearance of the advertisement give written notice of his intention to the applicant;

and the Comptroller shall insert the advertisement once in the Journal.

A person who gives notice in accordance with the advertisement shall be entitled to be heard on the application subject to any direction of the Court as to costs.

(2) As soon as may be after the expiration of 35 days from the appearance of the advertisement the applicant must make his application under the said section 30 or 75, as the case may be, by motion in the proceedings pending before the Court; and notice of the motion, together with a copy of the specification certified by the Comptroller and showing in coloured ink the amendment sought, must be served on the Comptroller, the parties to the proceedings and any person who has given notice of his intention to oppose the amendment.

(3) On the hearing of the motion the Court shall give such directions for the further conduct of the proceedings on the motion as it thinks necessary or expedient and, in particular, directions—

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(141) 1949 c. 87

(142) 1977 c. 37

(143) 1958 c. 38

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- (a) requiring the applicant and any party or person opposing the amendment sought to exchange statements of the grounds following the amendment and of objections to the amendment;
- (b) determining whether the motion shall be heard with the other proceedings relating to the patent in question or separately and, if separately; fixing the date of hearing thereof;
- (c) as to the manner in which the evidence shall be given and, if the evidence is to be given by affidavit, fixing the times within which the affidavits must be filed.

(4) Where the Court allows a specification to be amended, the applicant must forthwith lodge with the Comptroller an office copy of the order made by the Court and, if so required by the Court or Comptroller, leave at the Patent Office a new specification and drawings as amended, prepared in compliance with the 1949 or 1977 Act, whichever is applicable, and the rules made under those Acts respectively.

The Comptroller shall cause a copy of the order to be inserted at least once in the Journal.

[E.r. 3]

#### **Application for revocation of patent**

4.—(1) An application under section 72 of the 1977 Act for the revocation of a patent shall be made by petition.

This paragraph does not apply to an application made in pending proceedings.

(2) The respondent to a petition under section 32 of the 1949 Act or section 72 of the 1977 Act must serve an answer on the petitioner within 21 days after service of the petition on him.

[E.r. 4]

#### **Action for infringement**

5.—(1) Notwithstanding anything in Order 5, rule 4, proceedings in which a claim is made by the plaintiff in respect of the infringement of a patent shall be begun by writ.

(2) The plaintiff in such an action must serve with his statement of claim particulars of the infringement relied on, showing which of the claims in the specification of the patent are alleged to be infringed and giving at least one instance of each type of infringement alleged.

(3) If a defendant in such an action alleges, as a defence to the action, that at the time of the infringement there was in force a contract or licence relating to the patent made by or with the consent of the plaintiff and containing a condition or term void by virtue of section 44 of the 1977 Act, he must serve on the plaintiff particulars of the date of, and parties to, each such contract or licence and particulars of each such condition or term.

[E.r. 5]

#### **Objection to validity of patent**

6.—(1) A person who—

- (a) presents a petition under section 32 of the 1949 Act or section 72 of the 1977 Act for the revocation of a patent, or
- (b) being party to an action concerning a patent, either questions the validity of the patent or applies by counterclaim in the action for revocation of the patent,

must serve with his petition or other pleading particulars of the objections to the validity of the patent on which he relies.

(2) Particulars given pursuant to paragraph (1) must state every ground on which the validity of the patent is questioned and must include such particulars as will clearly define every issue which it is intended to raise.

(3) If the grounds stated in the particulars of objections include want of novelty or want of any inventive step, the particulars must state the manner, time and place of every prior publication or user relied upon and, if prior user is alleged, must—

- (a) specify the name of every person alleged to have made such user,
  - (b) state whether such user is alleged to have continued until the priority date of the claim in question or of the invention, as may be appropriate, and, if not, the earliest, and latest date on which such user is alleged to have taken place,
  - (c) contain a description accompanied by drawings, if necessary, sufficient to identify such user, and
  - (d) if such user relates to machinery or apparatus, state whether the machinery or apparatus is in existence and where it can be inspected.
- (4) If in the case of an existing patent—
- (a) one of the grounds stated in the particulars of objections is that the invention, so far as claimed in any claim of the complete specification, is not useful, and
  - (b) it is intended, in collection with that ground, to rely on the fact that an example of the invention which is the subject of any such claim cannot be made to work, either at all or as described in the specification,

the particulars must state that fact and identify each such claim and must include particulars of each such example, specifying the respects in which it is alleged that it does not work or does not work as described.

[E.r. 6]

### **Amendment of particulars**

7. Without prejudice to Order 20, rule 5, the Court may at any stage of the proceedings allow a party to amend any particulars served by him under the foregoing provisions of this Order on such terms as to costs or otherwise as may be just.

[E.r. 7]

### **Further particulars**

8. The Court may at any stage of the proceedings order a party to serve on any other party further or better particulars of infringements or of objections.

[E.r. 8]

### **Restrictions on admission of evidence**

9.—(1) Except with the leave of the judge hearing any action or other proceeding relating to a patent, no evidence shall be admissible in proof of any alleged infringement, or of any objection to the validity, of the patent, if the infringement or objection was not raised in the particulars of infringements or objections, as the case may be.

(2) In any case or other proceeding relating to a patent, evidence which is not in accordance with a statement contained in particulars of objections to the validity of the patent shall not be admissible in support of such an objection unless the judge hearing the proceeding allows the evidence to be admitted.

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(3) If any machinery or apparatus alleged to have been used before the priority date mentioned in rule 6(3)(b) is in existence at the date of service of the particulars of objections, no evidence of its user before that date shall be admissible unless it is proved that the party relying on such user offered, where the machinery or apparatus is in his possession, inspection of it to the other parties to the proceedings or; where it is not, used all reasonable endeavours to obtain inspection of it for those parties.

[E.r. 9]

### **Proceedings for infringement or revocation: summons for directions**

10.—(1) In an action for infringement of a patent (whether or not any other relief is claimed) and in proceedings by petition for the revocation of a patent the plaintiff or petitioner must, within one month after service thereof, take out a summons for directions as to the place and mode of trial returnable in not less than 21 days, and if the plaintiff or petitioner does not take out such a summons in accordance with this paragraph, the defendant or respondent, as the case may be, may do so.

The summons may be heard in chambers or in court as the Court thinks fit.

(2) The Court hearing a summons under this rule may give such directions—

- (a) for the service of further pleadings or particulars,
- (b) for the discovery of documents,
- (c) for securing the making of admissions,
- (d) for the service of interrogatories and of answers thereto,
- (e) for the taking by affidavit of evidence relating to matters requiring expert knowledge, and for the filing of such affidavits and the service of copies thereof on the other parties,
- (f) for the service on the other parties, by any party desiring to submit experimental proof, of full and precise particulars of the experiments proposed and of the facts which he claims to be able to establish thereby,
- (g) for the making of experiments, tests, inspections or reports,
- (h) for the hearing, as a preliminary issue, of any question that may arise (including any question as to the construction of the specification or other documents),

and otherwise as the Court thinks necessary or expedient for the purpose of defining and limiting the issues to be tried, restricting the number of witnesses to be called at the trial of any particular issue and otherwise securing that the case shall be disposed of, consistently with adequate hearing, in the most expeditious manner.

Where the evidence is directed to be given by affidavit, the deponents must attend at the trial for cross-examination unless, with the concurrence of the Court, the parties otherwise agree.

(3) On the hearing of a summons under this rule the Court shall consider, if necessary of its own motion, whether an independent scientific adviser should be appointed under rule 11 to assist the Court.

(4) No action for infringement of a patent or petition for the revocation of a patent shall be set down for trial unless and until a summons under this rule in the action or proceedings has been taken out and the directions given on the summons have been carried out or the time fixed by the Court for carrying them out has expired.

[E.r. 10]

### **Appointment of a scientific adviser**

11.—(1) In any proceedings under the 1949 or 1977 Act the Court may at any time, and on or without the application of any party, appoint an independent scientific adviser to assist the Court, either—

- (a) by sitting with the judge at the trial or hearing of the proceedings, or
- (b) by inquiring and reporting on any question of fact or of opinion not involving a question of law or construction,

according as the Court may direct.

(2) The Court may nominate the scientific adviser and, where appropriate, settle any question or instructions to be submitted or given to him.

[E.r. 11]

### **Determination of question or application where Comptroller declines to deal with it**

12. Where the Comptroller—

- (a) declines to deal with a question under section 8(7), 12(2), 37(8) or 61(5) of the 1977 Act;
- (b) declines to deal with an application under section 40(5) of that Act, or
- (c) certifies under section 72(7)(b) of that Act that the question whether a patent should be revoked is one which would more properly be determined by the court,

any person entitled to do so may, within 28 days after the Comptroller's decision, apply to the Court by originating summons to determine the question or application.

[E.r. 12]

### **Application by employee for compensation under section 40 of the 1977 Act**

13.—(1) An application by an employee for compensation under section 40(1) or (2) of the 1977 Act shall be made by originating summons issued within the period which begins when the relevant patent is granted and which expires one year after it has ceased to have effect:

Provided that, where a patent has ceased to have effect by reason of a failure to pay any renewal fee within the period prescribed for the payment thereof and an application for restoration is made to the Comptroller under section 28 of the said Act, the said period shall—

- (a) if restoration is ordered, continue as if the patent had remained continuously in effect, or
- (b) if restoration is refused, be treated as expiring one year after the patent ceased to have effect or six months after the refusal, whichever is the later.

(2) On the day fixed for the hearing of the originating summons under Order 28, rule 2, the Court shall, without prejudice to the generality of Order 28, rule 4, give directions as to the manner in which the evidence (including any accounts of expenditure and receipts relating to the claim) shall be given at the hearing of the summons and, if the evidence is to be given by affidavit, specify the period within which the affidavit must be filed.

(3) The Court shall also give directions as to the provision by the defendant to the plaintiff, or a person deputed by him for the purpose, of reasonable facilities for inspecting and taking extracts from the books of account by which the defendant proposes to verify the accounts mentioned in paragraph (2) or from which those accounts have been derived.

[E.r. 13]

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### **Communication of information to European Patent Office**

14.—(1) The Court may authorise the communication to the European Patent Office or the competent authority of any country which is a party to the European Patent Convention of any such information in the files of the court as the Court thinks fit.

(2) Before complying with a request for the disclosure of information under paragraph (1) the Courts shall afford to any party appearing to be affected by the request the opportunity of making representations, in writing or otherwise, on the question whether the information should be disclosed.

[E.r. 15]

### **Proceedings for determination of certain disputes**

15.—(1) The following proceedings must be begun by originating motion, that is to say—

- (a) proceedings for the determination of any dispute referred to the Court under—
  - (i) section 48 of the 1949 Act or section 58 of the 1977 Act;
  - (ii) paragraph 3 of Schedule 1 to the Registered Designs Act 1949(144), or
  - (iii) section 4 of the Defence Contracts Act 1958;
- (b) any application under section 45(3) of the 1977 Act.

(2) There must be at least 10 clear days between the serving of notice of a motion under this rule and the day named in the notice for hearing the motion.

(3) On the hearing of a motion under this rule the Court shall give such directions for the further conduct of the proceedings as it thinks necessary or expedient and, in particular, directions for the service of particulars and as to the manner in which the evidence shall be given and as to the date of the hearing.

[E.r. 16]

### **Application for rectification of register of patents or designs**

16.—(1) An application to the Court for an order that the register of patents or the register of designs be rectified must be made by originating motion, except where it is made in a petition for the revocation of a patent or by way of counterclaim in proceedings for infringement or by originating summons in proceedings for an order under section 51 of the Trustee Act (Northern Ireland) 1958(145).

(2) Where the application relates to the register of patents, the applicant shall forthwith serve an office copy of the application on the comptroller, who shall be entitled to appear and to be heard on the application.

[E.r. 17]

### **Counterclaim for rectification of register of designs**

17.—(1) Where in any proceedings a claim is made for relief for infringement of the copyright in a registered design, the party against whom the claim is made may in his defence put in issue the validity of the registration of that design or may counterclaim for an order that the register of designs be rectified by cancelling or varying the registration or may do both those things.

(2) A party to any such proceedings who in his pleading (whether a defence or counterclaim) disputes the validity of the registration of a registered design must serve with the pleading particulars

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(144) 1949 c. 88  
(145) 1958 c. 23 (N.I.)



of the objections to the validity of the registration on which he relies in support of the allegation of invalidity.

(3) A party to any such proceedings who counterclaims for an order that the register of designs be rectified must serve on the Comptroller a copy of the counterclaim together with a copy of the particulars mentioned in paragraph (2); and the Comptroller shall be entitled to take such part in the proceedings as he thinks fit but need not serve a defence or other pleading unless ordered to do so by the Court.

[E.r. 18]

## ORDER 105

### REGISTRATION OF MAINTENANCE ORDERS: ATTACHMENT OF EARNINGS ORDERS FOR THE ENFORCEMENT OF MAINTENANCE ORDERS

#### I. INTERPRETATION

##### Definitions

1. In this Order—

“the Act of 1920” means the Maintenance Orders (Facilities for Enforcement) Act, 1920(**146**);

“the Act of 1950” means the Maintenance Orders Act, 1950(**147**);

“the Act of 1958” means the Maintenance Orders Act, 1958(**148**);

“the Act of 1966” means the Maintenance and Affiliation Orders Act (Northern Ireland) 1966(**149**);

“the Act of 1972” means the Maintenance Orders (Reciprocal Enforcement) Act 1972(**150**);

“the Office” means the Probate and Matrimonial Office.

#### II. PROCEEDINGS UNDER THE ACT OF 1920

##### Registration, etc., of orders under Act of 1920

2.—(1) The prescribed officer for the purposes of section 1(1) of the Act of 1920 shall be the Master, and on receiving from the Secretary of State a copy of a maintenance order made by a court in any part of Her Majesty's dominions outside the United Kingdom to which the Act of 1920 extends he shall cause the order to be registered in the register kept for the purpose of that Act (in this rule referred to as “the register”).

The copy of the order received from the Secretary of State shall be filed in the Office.

(2) An application for the transmission of a Northern Ireland maintenance order under section 2 of the Act of 1920 shall be made to the Master by lodging in the Office a certified copy of the order and an affidavit by the applicant stating the applicant's reasons for believing that the person liable to make payments under the order is resident in some part of Her Majesty's dominions outside the United Kingdom to which the Act of 1920 extends, together with full particulars, so far as known to the applicant, of that person's address and occupation and any other information which may be

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(**146**) 1920 c. 33

(**147**) 1950 c. 37

(**148**) 1958 c. 39

(**149**) 1966 c. 36 (N.I.)

(**150**) 1972 c. 18

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required by the law of that part of Her Majesty's dominions for the purpose of the enforcement to the order.

(3) If it appears to the Master that the person liable to make payments under the Northern Ireland maintenance order is resident in some part of Her Majesty's dominions outside the United Kingdom to which the Act of 1920 extends, he shall send the certified copy of the order to the Secretary of State for transmission to the Governor of that part of Her Majesty's dominions.

Particulars of any Northern Ireland maintenance order sent to the Secretary of State under the said section 2 shall be entered in the register and the fact that this has been done shall be noted in the court minutes.

(4) Any person who satisfies the Master that he is entitled to or liable to make payments under a Northern Ireland maintenance order or a maintenance order made by a court in any part of Her Majesty's dominions outside the United Kingdom to which the Act of 1920 extends, or a solicitor acting on behalf of any such person or, with the leave of the Master, any other person, may inspect the register and bespeak copies of any order which has been registered and of any document filed therewith.

(5) In this rule "Northern Ireland maintenance order" means a maintenance order made by the High Court.

[E.r. 2]

### III. PROCEEDINGS UNDER PART II OF THE ACT OF 1950 AND PART I OF THE ACT OF 1958

#### **Interpretation of Part III**

3. In this Part of this Order—

"Deputy Principal Clerk" means the Deputy Principal Clerk of Session;

"Senior Registrar" means the Senior Registrar of the Principal Registry of the Family Division of the High Court of Justice in England and Wales;

"Northern Ireland Order" means a maintenance order made by the High Court;

"English order" means a maintenance order made by the High Court of Judicature in England and Wales;

"Scottish order" means a maintenance order made by the Court of Session;

"Maintenance order" means a maintenance order to which section 16 of the Act of 1950 applies;

"the register" means the register kept for the purpose of the Act of 1950 and the Act of 1958;

"a magistrates' court" means a magistrates' court in England and Wales;

#### **Registration, etc., of Northern Ireland Order under the Act of 1950**

4.—(1) An application for the registration of a Northern Ireland order under Part II of the Act of 1950 may be made by lodging with the Master—

- (a) a letter of application;
- (b) an affidavit by the applicant;
- (c) a copy of that affidavit, and
- (d) a certified copy of the order.

(2) The affidavit lodged under paragraph (1) shall state—

- (a) the address in the United Kingdom, and the occupation of the person liable to make payments under the order;
- (b) the date of service of the order on the person liable to make payments thereunder or, if the order has not been served, the reason why service has not been effected;
- (c) the reason why it is convenient that the order should be enforceable in England and Wales or Scotland as the case may be;
- (d) the amount of any arrears due to the applicant under the order, and
- (e) that the order is not already registered.

(3) If it appears to the Master that the person liable to make payments under the order resides in England and Wales or Scotland and that it is convenient that the order should be enforceable there, he shall send a certified copy of the order and the applicant's affidavit to the Senior Registrar or the Deputy Principal Clerk as the case may be.

(4) The prescribed officer for the purposes of the Act of 1950 and the Act of 1958 shall be the Master.

(5) On receipt of notice of the registration of a Northern Ireland order in the Supreme Court of Judicature in England and Wales or the Court of Session the Master shall cause particulars of the notice to be entered in Part I of the register.

(6) The fact that the order has been registered in the Supreme Court of Judicature in England and Wales or the Court of Session shall be noted in the court minutes.

#### **Re-registration of a Northern Ireland Order in a Magistrates' Court under Part 1 of the Act of 1958**

5.—(1) Where a Northern Ireland order has been registered in the Supreme Court of Judicature in England and Wales under Part II of the Act of 1950 an application under Part I of the Act of 1958 for the registration of that order in a magistrates' court shall be made by lodging with the Master—

- (a) a letter of application;
- (b) an affidavit by the applicant;
- (c) a copy of the affidavit, and
- (d) a certified copy of the order.

(2) The affidavit lodged under paragraph (1) shall state—

- (a) the date of the registration of the order in the Supreme Court of Judicature in England and Wales under Part II of the Act of 1950;
- (b) the address and occupation of the person liable to make payments under the order;
- (c) the reason why registration of the order in a magistrates' court is desired;
- (d) the amount of any arrears due under the order, the date to which those arrears have been calculated and the date on which the next payment under the order falls due;
- (e) the date of birth of each child named in the Order;
- (f) whether any proceedings are pending for the enforcement of the order; and
- (g) that the order is not already registered under the Act of 1958 or if the order has been registered under that Act, whether the registration has been cancelled.

(3) The period required to be subscribed by rules of court for the purpose of section 2(2) of the Act of 1958 shall be 14 days.

(4) If the application is granted the Master shall send to the clerk of the appropriate magistrates' court—

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- (a) the copy of the affidavit;
- (b) a certified copy of the Northern Ireland order, and
- (c) a copy of the order granting the application.

(5) On receiving notice that the order has been registered in a magistrates' court the Master shall enter particulars of the registration in Part I of the register and in the Court minutes.

#### **Discharge or variation of registered order**

6. Where the High Court makes an order varying or discharging a Northern Ireland order registered under the Act of 1950 the Master shall send to the Senior Registrar or the Deputy Principal Clerk, as the case may be, and where the order is re-registered in a magistrates' court under the Act of 1958 to the clerk of that court, a certified copy of the order varying or discharging the registered order.

#### **Cancellation of registration**

7. Where the registration of a Northern Ireland order registered in the Supreme Court of Judicature in England and Wales or the Court of Session under the Act of 1950 is cancelled under section 24(1) of the Act of 1950, and where the order is registered in a magistrates' court under the Act of 1958 the registration in that court is cancelled under section 5 of the Act of 1958 the Master on receipt of notice of cancellation shall cause particulars of it to be entered in Part I of the register.

#### **Registration, etc. of English and Scottish Orders**

8.—(1) In relation to an English or Scottish order the prescribed officer for the purposes of section 17(2) of the Act of 1950 shall be the Master.

(2) On receipt of a certified copy of an English or Scottish order for registration, the Master shall—

- (a) cause the order to be registered in Part II of the register and notify the Senior Registrar or Deputy Principal Clerk as the case may be, that this has been done;
- (b) file the certified copy and any statutory declaration or affidavit as to the amount of any arrears due under the order.

(3) An application under section 21(2) of the Act of 1950 by a person liable to make payments under a Scottish order registered in the High Court to adduce before the Court such evidence as is mentioned in that section shall be made by lodging a request for an appointment before the Master; and notice of the day and time fixed for hearing shall be sent by post to the applicant and to the person entitled to payments under the order.

(4) The prescribed officer to whom notice of the discharge or variation of an English or Scottish order registered in the High Court is to be given under section 23(1)(a) of the Act of 1950 shall be the Master to whom a certified copy of the order was sent for registration, and on receipt of the notice he shall cause particulars of it to be registered in Part II of the register.

(5) An application under section 24(1) of the Act of 1950 for the cancellation of the registration of an English or Scottish order shall be made ex parte by affidavit to the Master, and the Master, if he cancels the registration, shall note the cancellation in Part II of the register and send notice of the cancellation to the Senior Registrar or Deputy Principal Clerk, as the case may be.

[E.r. 5]

### **Inspection of register**

9. Any person who satisfies the Master that he is entitled to or liable to make payments under a maintenance order of a superior court or a solicitor acting on behalf of any such person or, with the leave of the Master any other person, may inspect the register and bespeak copies of any such order which is registered in the High Court under Part II of the Act of 1950 and of any statutory declaration or affidavit filed therewith.

[E.r. 6]

## **IV. REGISTRATION, ETC. OF CERTAIN ORDERS UNDER THE ACT OF 1966**

### **Interpretation of Part IV**

10.—(1) In this Part of this Order—

“maintenance order” has the meaning assigned to it by section 10(2) of the Act of 1966;

“proper officer” means the Master;

“the register” means any register kept for the purposes of the Act of 1966.

[E.r. 7]

### **Application for registration**

11.—(1) An application under section 11 of the Act of 1966 for the registration in a court of summary jurisdiction of a maintenance order made by the High Court may be made—

- (a) on the making of the maintenance order or an order varying the maintenance order, or
- (b) at any other time by lodging with the proper officer a certified copy of the maintenance order and an affidavit by the applicant, together with a copy thereof, stating—
  - (i) the address and occupation of the person liable to make payments under the maintenance order;
  - (ii) the reason why registration of the maintenance order in a court of summary jurisdiction is desired;
  - (iii) the amount of any arrears due to the applicant under the maintenance order, the date to which those arrears have been calculated and the date on which the next payment under the maintenance order falls due;
  - (iv) the date of birth of each child named in the maintenance order;
  - (v) that the maintenance order is not already registered under the Act of 1966; and
  - (vi) whether any proceedings are pending for the enforcement of the maintenance order.

(2) Where such application is granted, the applicant must, if he has not already done so, lodge with the proper officer a certified copy of the maintenance order and, where the application was granted on the making of the maintenance order or any order varying the maintenance order, a statement signed by the applicant or his solicitor, and a copy thereof, giving the address of the person entitled to receive payments under the maintenance order and the particulars mentioned in paragraph (1)(b) (i), (iii) and (iv).

(3) The period required to be prescribed by rules of Court for the purpose of section 11(2) of the Act of 1966 shall be 14 days.

(4) The proper officer shall cause the certified copy of a maintenance order required by the said section 11(2) to be sent to the clerk of petty sessions acting for the petty sessions district in which the defendant appears to be, indorsed with a note that the application for registration of the maintenance order has been granted and to be accompanied by a copy of the affidavit or statement lodged under paragraph (1) or (2), as the case may be.

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(5) On receipt of notice that a maintenance order made by the High Court has been registered in a court of summary jurisdiction in accordance with section 11(5) of the Act of 1966, the proper officer shall enter particulars of the registration in the Court minutes.

[E.r. 8]

#### **Registration of order made by a court of summary jurisdiction**

12. On receipt of a certified copy of a maintenance order made by a court of summary jurisdiction sent to him pursuant to section 11(4)(c) of the Act of 1966, the Master, who is the prescribed officer for the purpose of that section, shall cause the order to be registered in the High Court by filing the copy and making an entry in the register and shall notify the clerk of petty sessions that the maintenance order has been duly registered.

[E.r. 9]

#### **Variation or discharge of registered order**

13.—(1) Where the High Court makes an order varying or discharging a maintenance order registered in a court of summary jurisdiction under Part II of the Act of 1966, the proper officer shall send a certified copy of the first-mentioned order to the clerk of petty sessions concerned.

(2) Where a certified copy of an order varying a maintenance order made by the High Court and registered in a court of summary jurisdiction under Part II of the Act of 1966 is received from the clerk of petty sessions, the proper officer shall file the copy and enter particulars of the variation in the Court minutes.

(3) Where a certified copy of an order varying or discharging a maintenance order made by a court of summary jurisdiction and registered in the High Court under Part II of the Act of 1966 is received from a clerk of petty sessions, the proper officer shall—

- (a) file the copy, and
- (b) enter particulars of the variation or discharge in the register.

[E.r. 10]

#### **Appeal from variation, etc. of order by court of summary jurisdiction**

14. Order 55 shall apply to an appeal which lies to a Judge of the High Court under section 13(8) of the Act of 1966.

[E.r. 11]

#### **Cancellation of registration**

15.—(1) A notice under section 14 of the Act of 1966 by a person entitled to receive payments under a maintenance order registered in the High Court must be given to the proper officer.

(2) Where the High Court gives notice under the said section 14, the proper officer shall endorse the notice on the certified copy mentioned in rule 13(1).

(3) Where notice under section 14 of the Act of 1966 is given in respect of a maintenance order registered in the High Court, the proper officer, on being satisfied by an affidavit by the person entitled to receive payments under the order that no proceedings for the enforcement of the order are pending, shall—

- (a) cancel the registration by entering particulars of the notice in the register, and

- (b) send notice of the cancellation to the clerk of petty sessions acting for the petty sessions district in which the order was made, stating, if such be the case, that the cancellation is in consequence of a notice given under subsection (1) of section 14 of the Act of 1966.

(4) On receipt of notice from a clerk of petty sessions that the registration in a court of summary jurisdiction under the act of 1966 of a maintenance order made by the High Court has been cancelled, the proper officer shall enter particulars of the cancellation in the Court minutes.

[E.r. 12]

## V. PROCEEDINGS UNDER THE ACT OF 1972

### **Interpretation of Part V**

16. In this Part of this Order—

- (a) any reference to a provision of the Act of 1972 in relation to a country or territory with respect to which an Order in Council has been made under Section 40 of that Act is a reference to that provision as applied by the Order in Council;
- (b) for the purposes of sections 2(3), 5(4) and 14 of the Act of 1972 the prescribed officer shall be the Master.

[E.r. 21]

### **Application for transmission of maintenance order to reciprocating country**

17. An application for a maintenance order to be sent to a reciprocating country under section 2 of the Act of 1972 shall be made by lodging in the Office—

- (a) an affidavit by the applicant stating—
  - (i) the applicant's reason for believing that the payer under the maintenance order is residing in that country, and
  - (ii) the amount of any arrears due to the applicant under the order, the date to which those arrears have been calculated and the date on which the next payment under the order falls due;
- (b) a certified copy of the maintenance order;
- (c) a statement giving such information as the applicant possesses as to the whereabouts of the payer;
- (d) a statement giving such information as the applicant possesses for facilitating the identification of the payer (including, if known to the applicant, the name and address of any employer of the payer, his occupation and the date and place of issue of any passport of the payer), and
- (e) if available to the applicant, a photograph of the payer.

[E.r. 22]

### **Certification of evidence given on provisional order**

18. Where the High Court makes a provisional order under section 5 of the Act of 1972, the document required by subsection (4) of that section to set out or summarise the evidence given in the proceedings shall be authenticated by a certificate signed by the Master.

[E.r. 23]

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### **Confirmation of provisional order**

19.—(1) On receipt by the High Court of a certified copy of a provisional order made in a reciprocating country, together with the document mentioned in section 5(5) of the Act of 1972, the Master shall fix a time and place for the Court to consider whether or not the provisional order should be confirmed and shall send to the payee under the maintenance order notice of the time and place so fixed together with a copy of the provisional order and of that document.

(2) The Master shall send to the court which made the provisional order a certified copy of any order confirming or refusing to confirm that order.

[E.r. 24]

### **Taking of evidence for court in reciprocating country**

20.—(1) The High Court shall be the prescribed court for the purposes of taking evidence pursuant to a request by a court in a reciprocating country under section 14 of the Act of 1972 where—

- (a) the request for evidence relates to a maintenance order made by a superior court in the United Kingdom, and
- (b) the witness resides in Northern Ireland.

(2) The evidence may be taken before a judge or officer of the High Court as the court thinks fit and the appropriate provisions of these Rules relating to the examination on oath before a Judge, an officer or examiner of the Court or some other person, of any witness or person shall apply with the necessary modifications.

[E.r. 25]

### **Notification of variation or revocation**

21. Where the High Court makes an order (other than a provisional order) varying or revoking a maintenance order a copy of which has been sent to a reciprocating country in pursuance of section 2 of the Act of 1972, the Master shall send a certified copy of the order to the court in the reciprocating country.

[E.r. 26]

### **Transmission of documents**

22. Any document required to be sent to a court in a reciprocating country under section 5(4) or section 14(1) of the Act of 1972 or by rule 19(2) or 21 shall be sent to the Secretary of State for transmission to that court unless the Master is satisfied that, in accordance with the law of the country, the document may properly be sent by him direct to that court.

[E.r. 27]

### **Application of Part V to the Republic of Ireland**

23.—(1) In relation to the Republic of Ireland rules 16 to 22 shall have effect subject to the provisions of this rule.

(2) For the words “a reciprocating country” wherever they occur there shall be substituted the words “the Republic of Ireland.”

(3) In rule 16(2) for the reference to section 5(4) there shall be substituted a reference to section 5(2).

(4) the following paragraphs shall be added to rule 17 :



- “(f) a statement as to whether or not the payer appeared in the proceedings in which the maintenance order was made and, if he did not, the original or a copy certified by the applicant or his solicitor to be a true copy of a document which establishes that notice of the institution of the proceedings was served on the payer;
  - (g) a document which establishes that notice of the order was sent to the payer, and
  - (h) if the payee received legal aid in the proceedings in which the order was made, a copy certified by the applicant or his solicitor to be a true copy of the legal aid certificate.”
- (5) For rule 18 there shall be substituted the following rule :

**“Certification of evidence given on application for variation or revocation**

18. Where an application is made to the High Court for the variation or revocation of an order to which section 5 of the Act of 1972 applies, the certified copy of the application and the documents required by subsection (2) of that section to set out or summarise the evidence in support of the application shall be authenticated by a certificate signed by the Master.”

(6) Rule 19 shall not apply.

(7) For rule 21 there shall be substituted the following rule :

**“Notification of variation or revocation**

21. Where the High Court makes an order varying or revoking a maintenance order to which section S of the Act of 1972 applies, the Master shall send a certified copy of the order and a statement as to the service on the payer of the documents mentioned in subsection (2) of that section to the court in the Republic of Ireland by which the maintenance order is being enforced.”

(8) Rule 22 shall not apply.

[E.r. 28]

**VI. ATTACHMENT OF EARNINGS ORDERS UNDER THE  
JUDGMENTS (ENFORCEMENT) ACT (NORTHERN IRELAND) 1969**

**Interpretation**

24. In this part of this Order—

“the Act of 1969” means the Judgments (Enforcement) Act (Northern Ireland) 1969<sup>(151)</sup>;

“the Order of 1978” means the Matrimonial Causes (Northern Ireland) Order 1978<sup>(152)</sup>;

“maintenance order” means any order specified in section 77D(1)(a) of the Act of 1969;

**Application for attachment of earnings order by the person entitled to payments**

25.—(1) Where the person to whom payments are required to be made under a maintenance order desires to apply to the High Court under section 73 of the Act of 1969 for an attachment of earnings order to secure those payments the application must be made by summons, issued out of the Office.

The defendant or respondent to the summons (in this order referred to as “the defendant”) shall be the person liable to make payments under the maintenance order and any application under Article 34 of the Order of 1978 for leave to enforce payment of any arrears which became due more than 12 months before the issue of the summons shall be made by the summons.

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<sup>(151)</sup>1969 c. 30 (N.I.)

<sup>(152)</sup>S.I. 1978 No. 1045 (N.I. 15)

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- (2) The summons must be supported by an affidavit by the applicant stating—
- (a) particulars of the maintenance order;
  - (b) the date of service of the maintenance order on the defendant or, if the order has not been served, the reason why service has not been effected;
  - (c) the amount of any arrears due to the applicant under the maintenance order, the date to which those arrears have been calculated and the date on which the next payment under the order falls due;
  - (d) particulars of any proceedings which have been taken for the enforcement of the maintenance order;
  - (e) the name and address of any person believed to be the defendant's employer;
  - (f) such of the following particulars relating to the defendant as are known to the applicant, that is to say—
    - (i) his full name and address,
    - (ii) his place of work,
    - (iii) the nature of his work and his works number, if any;
  - (g) such other facts relevant to the names of the defendant as are known to the applicant and in particular details of any other attachment of earnings order made by any other court must be given.

(3) Unless the Court otherwise directs, the summons, together with a copy of the affidavit in support, must be served on the defendant personally or by post at least 14 days before the return day and the defendant may, within 10 days after the service, file an affidavit in answer and in that case must serve a copy of his affidavit on the applicant within 3 days after filing it.

[E.r. 13]

### **Notice to employer**

26. Without prejudice to the powers conferred by section 77 of the Act of 1969, the Court may at any stage of the proceedings send to any person appearing to have the debtor in his employment a notice requesting him to give to the Court within such period as may be specified in the notice a statement of the debtor's earnings and anticipated earnings with such other particulars as may be so specified.

### **Exercise of power to obtain statement of earnings**

27. An order under section 77 of the Act of 1969 shall be endorsed with or incorporate a notice warning the person to whom it is directed of the consequences of disobedience to the order and shall be served on him personally.

### **Application for attachment of earnings order by person liable to make payments**

28. An application by the person liable to make payment under a maintenance order of the High Court for an attachment of earnings order to secure those payments may be made on the making of the maintenance order or an order of the High Court varying the maintenance order.

[E.r. 14]

### **Form and service of order**

29.—(1) An attachment of earnings order must be made in Form No. 49 in Appendix A and the particulars of the defendant required to be given in the first paragraph of that form shall, so far as

they are known to the Court, be the prescribed particulars for the purposes of section 73(4) of the Act of 1969.

(2) The Court shall cause a copy of an attachment of earnings order and of any order varying or discharging such an order to be served on the defendants and on the person to Whom the attachment of earnings order is directed.

(3) Notwithstanding any provision of these Rules relating to the service of documents, service under this rule of a copy of an order on a person other than a corporation shall be effected by sending the copy to him at his last known place of residence or, where he is the person to whom the attachment of earnings order is directed, at his place of business.

(4) Service under this rule of a copy of an order on a corporation shall be effected by sending the copy to it at—

- (a) such address, if any, as the corporation may in a written request to the Court have specified for the purpose of this rule in relation to the defendant or to the class or description of persons to which he belongs, or
- (b) the registered office of the corporation or, if the corporation has no registered office, any place where it resides or carries on business.

(5) A copy of Schedule 1A to the Act of 1969 shall be served with or annexed to the attachment of earnings order.

[E.r. 15]

#### **Application to revive an attachment of earnings order**

30.—(1) An application to revive an attachment of earnings order shall be treated as if it were an application for such an order under rule 25.

(2) A copy of the order for the revival of which the application is made shall be lodged with the application.

(3) Upon making an order under this rule the original attachment of earnings order may be varied as the Court may think fit.

#### **Notice of cessation of order**

31. Where an attachment of earnings order ceases to have effect by virtue of section 77D(4) (b) or (5) of the Act of 1969, the notice of the cessation required by section 77D(6) of that Act to be given to the person to whom the order was directed shall be given by the Master if the related maintenance order—

- (a) was made by the High Court and is not registered in a court of summary jurisdiction under Part II of the Act of 1966, or
- (b) was made by a court of summary jurisdiction and is registered in the High Court under the said Part II, or
- (c) has ceased to be registered in the High Court under Part II of the Act of 1950.

[E.r. 16]

#### **Discharge or variation by court of own motion**

32.—(1) Subject to paragraph 5, the powers conferred by section 76(1) of the Act of 1969 may be exercised by the Court of its own motion in the circumstances mentioned in the following paragraphs.

(2) Where it appears to the Court that a person served with an attachment of earnings order directed to him has not the defendant in his employment, the Court may discharge the order.

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(3) Where an attachment of earnings order which has lapsed under section 76(6) of the Act of 1969 is again directed to a person who appears to the Court to have the defendant in his employment, the Court may make such consequential variations in the order as it thinks fit.

(4) Where, after an attachment of earnings order has been made, it appears to the Court that the related maintenance order has ceased to have effect, whether by virtue of the terms of the maintenance order or under paragraph 2 of Schedule 3 to the Order of 1978 or otherwise, the Court may discharge or vary the attachment of earnings order.

(5) Before discharging or varying an order of its own motion under any of the foregoing paragraphs, the Court shall, unless it thinks it unnecessary in the circumstances to do so, give the defendant and the person entitled to payment under the related maintenance order an opportunity of being heard on the question whether the order should be varied or discharged, and for that purpose the Master may give them notice of a date, time and place at which the question will be considered.

[E.r. 18]

#### **Application to determine whether payments are earnings**

33. An application to the High Court under section 77B(1) of the Act of 1969 must be made by summons returnable not less than 4 days after service thereof on the person (other than the applicant) who is also entitled to make the application.

[E.r. 19]

#### **Notification of making an attachment of earnings order**

34.—(1) The proper officer of the court shall notify the Enforcement of Judgments Office when an attachment of earnings order has been made.

(2) The notification under paragraph (1) shall specify the amount of earnings attached under the order.

## **ORDER 106**

### **PROCEEDINGS RELATING TO SOLICITORS : THE SOLICITORS (NORTHERN IRELAND) ORDER 1976**

#### **Interpretation**

1. In this Order—

“the Order” means the Solicitors (Northern Ireland) Order 1976(153) and an Article referred to by number means the Article so numbered in that order;

“the Committee” means the Disciplinary Committee appointed under Article 43;

“Law Society” means the Incorporated Law Society of Northern Ireland;

In rules 13 to 18 “appeal” means an appeal under Article 53 to a judge of the High Court against an order made by the Disciplinary Committee.

[E.r. 1]

### **Jurisdiction under Part V of the Order exercisable by judge in chambers, etc.**

2. Any application to a judge of the High Court under Part V of the Order may be disposed of in chambers.

[E.r. 2]

### **Power to order solicitor to deliver cash account, etc.**

3.—(1) Where the relationship of solicitor and client exists or has existed, the Court may, on the application of the client or his personal representatives, make an order for—

- (a) the delivery by the solicitor of a cash account;
- (b) the payment or delivery up by the solicitor of money or securities;
- (c) the delivery to the plaintiff of a list of the moneys or securities which the solicitor has in his possession or control on behalf of the plaintiff;
- (d) the payment into or lodging in court of any such moneys or securities.

(2) An application for an order under this rule must be made by originating summons.

(3) If the defendant alleges that he has a claim for costs, the Court may make such order for the taxation and payment, or securing the payment thereof and the protection of the defendant's lien, if any, as the Court thinks fit.

[E.r. 3]

### **Appearance to originating summons unnecessary**

4. No appearance need be entered to an originating summons under this Order.

[E.r. 5]

### **Application under rule 3 and Schedule 1 to the Order**

5.—(1) Proceedings in the High Court under rule 3 and Schedule 1 to the Order shall be assigned to the Chancery Division.

(2) The originating summons by which an application for an order under the said rule or Schedule is made must be entitled in the matter of a solicitor or a deceased solicitor, as the case may be, (without naming him) and in the matter of the Order;

(3) Where an order has been made under paragraph 3(1)(b), 9 or 15(1) of the said Schedule an application for an order under paragraph 5, 13(1) or 19 may be made by summons in the proceedings in which the first mentioned order was made.

[E.r. 6]

### **Defendants to applications under Schedule 1 to the Order**

6. The defendant to an originating summons by which an application for an order under Schedule 1 to the Order is made shall be—

- (a) if the application is for an order under paragraph 9 thereof, the solicitor or, as the case may be, every member of the firm, on whose behalf the money in respect of which the order is sought is held;
- (b) if the application is for an order under paragraph 5 or 11 thereof, the Law Society;
- (c) if the application is for an order under paragraph 3(1)(b) thereof, the person against whom the order is sought;

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- (d) if the application is for an order under paragraph 15 thereof for the re-direction of postal packets addressed to a solicitor or his firm, the solicitor or, as the case may be, every member of the firm;
- (e) if the application is for an order under paragraph 16 thereof, the solicitor or personal representative in substitution for whom the appointment of a new trustee is sought and, if he is a co-trustee, the other trustee or trustees.

[E.r. 7]

#### **Interim order restricting payment out of banking account**

7. At any time after the issue of an originating summons by which an application for an order under paragraph 9 of Schedule 1 to the Order is made, the Court may, on the ex parte application of the plaintiff, make an interim order under that paragraph to have effect until the hearing of the summons and include therein a further order requiring the defendant to show cause at the hearing why an order under that paragraph should not be made.

[E.r. 8]

#### **Adding parties etc.**

8. Without prejudice to its power under Order 15, the Court may, at any stage of proceedings under Schedule 1 to the Orders order any person to be added as a party to the proceedings or to be given notice thereof.

[E.r. 9]

#### **Service of documents**

9.—(1) Any document required to be served on the Law Society in proceedings under this Order shall be served by sending it by prepaid post to the Secretary of the Law Society.

(2) Subject to paragraph (1) an originating summons by which an application under Schedule 1 to the Order is made, an order under paragraph 9 of that Schedule or rule 7 and any other document not required to be served personally which is to be served on a defendant to proceedings under the said Schedule shall, unless the Court otherwise directs, be deemed to be properly served by sending it by prepaid post to the defendant at his last known address.

[E.r. 10]

#### **Title, service, etc. of notice of motion**

10.—(1) The notice of the originating motion by which an appeal from the Committee is brought must be entitled in the matter of a solicitor (without naming him) and in the matter of the Order.

(2) Unless the Court otherwise orders, the persons to be served with such notice are every party to the proceedings before the Committee and the Law Society;

(3) Order 55, rule 14(2), shall apply in relation to the appeal as if for the period of 21 days therein specified there was substituted a period of 14 days commencing with the day on which a statement of the Committee's findings was filed pursuant to Article 52.

[E.r. 12]

#### **Law Society to produce certain documents**

11.—(1) Within 14 days after being served with notice of the originating motion by which an appeal is brought the Law Society must lodge in the Central Office three copies of each of the following documents:—

- (a) the order appealed against together with the statement of the Committee's findings required by Article 52;
- (b) any document lodged by a party with the Committee's findings which is relevant to a matter in issue on the appeal, and
- (c) the transcript of the shorthand note, or as the case may be, the copy taken by the chairman of the Committee of the evidence in the proceedings before them.

(2) At the hearing of the appeal the Court shall direct by whom the costs incurred in complying with paragraph (1) are to be borne and may order them to be paid to the Law Society by one of the parties notwithstanding that the Law Society does not appear at the hearing.

[E.r. 13]

#### **Restriction on requiring security for costs**

12. No person other than an appellant who was the applicant in the proceedings before the Committee shall be ordered to give security for the costs of an appeal.

[E.r. 14]

#### **Power to require statement of Committee**

13. The Court may direct the Committee to furnish the Court with a written statement of their opinion on the case which is the subject-matter of an appeal or on any question arising therein, and where such a direction is given, the secretary of the Committee must, as soon as may be lodge three copies of such statement in the Central Office and at the same time send a copy to each of the parties to the appeal and the Secretary of the Law Society.

[E.r. 15]

#### **Persons entitled to be heard on appeal**

14. A person who has not been served with notice of the originating motion by which an appeal is brought but who desires to be heard in opposition to the appeal shall, if he appears to the Court to be a proper person to be so heard, be entitled to be so heard.

[E.r. 16]

#### **Discontinuance of appeal**

15.—(1) An appellant may at any time discontinue his appeal by serving notice of discontinuance on the secretary of the Committee and every other party to the appeal, and if the appeal has been entered, by lodging a copy of the notice in the Central Office.

(2) Where an appeal has been discontinued in accordance with paragraph (1) it shall be treated as having been dismissed with an order for payment by incurred by the Law Society in complying with rule 11(1).

the appellant of the costs of and incidental to the appeal, including any costs

[E.r. 17]

#### **Applications to the Lord Chief Justice**

16. A person who applies to the Lord Chief Justice—

- (a) in respect of the refusal of the Law Society to issue a certificate pursuant to Article 5(2);
- (b) in respect of the refusal of the Law Society to grant relief to any person seeking to be admitted as a solicitor against the contravention of regulations made under Article 6(1);

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- (c) under Article 14(2) from the decision of the Council of the Law Society refusing the issue of a practising certificate or as to any terms or conditions subject to which such a certificate is issued;
- (d) under Article 16(4) from the decision of the Council of the Law Society not to terminate the suspension of a practising certificate;
- (e) under Article 29(2) from the decision of the Council of the Law Society refusing to grant its consent or as to the terms and conditions attached to such consent under paragraph (1) of said Article;
- (f) under Article 46(2) to have a solicitor's name replaced on the roll;

shall lodge in the Central Office—

- (i) a petition under the hand of the applicant praying for the appropriate relief and setting out the circumstances in which the application is made and the matters of fact upon which the applicant relies in support of his application, and
- (ii) an affidavit verifying the facts stated in the petition;

and shall within 2 days after lodging the said document in the Central Office lodge copies thereof at the Law Society's office.

### **Complaints to the Lord Chief Justice**

17.—(1) A complaint to the Lord Chief Justice under Article 20 (which relates to a solicitor practising without a certificate) or under Article 27(1) (which relates to a solicitor acting as agent for an unqualified person) must be made by originating summons grounded on an affidavit setting out the nature of the complaint, the circumstances in which that complaint arose and the matters of fact upon which the complainant relies.

(2) The summons and a copy of the grounding affidavit must be served on the solicitor against whom the complaint is made and on the Law Society at least 14 days before the date of hearing.

## **ORDER 107**

### **COMMISSIONERS FOR OATHS AND NOTARIES PUBLIC**

#### **I. GENERAL**

#### **Interpretation**

1. In this Order—

“district” means a petty sessions district within the meaning of section 21 of the Magistrates' Courts Act (Northern Ireland) 1964(154) and any order made thereunder.

“Principal Secretary” means the Principal Secretary Justice to the Lord Chief Justice.

#### **II. COMMISSIONERS FOR OATHS**

#### **Application for appointment**

2.—(1) An application for appointment as a commissioner for oaths shall be made by sending to the Principal Secretary a memorial in Form No. 50 in Appendix A, together with two certificates in Form No. 51 in Appendix A, signed respectively by—

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(154)1964 c. 21 (N.I.)



- (a) at least 6 solicitors practising in the district for which the appointment is sought, and
- (b) magistrates, traders and residents in such district.

(2) The applicant shall send a copy of his memorial to every commissioner for oaths for such district.

#### **Objection to appointment**

3. A commissioner for oaths for the district to which the application relates may object to the appointment sought in a letter to the Principal Secretary, setting forth the grounds of his objection and, before making any appointment, the Lord Chief Justice shall have regard to any such objection.

#### **Other considerations affecting appointment**

4. The Lord Chief Justice shall in any case, before making any appointment, have regard to—
- (a) the population of the district to which the application relates,
  - (b) the number of commissioners for oaths already in office for such district, and
  - (c) any other circumstances which he considers to be relevant.

#### **Warrant of appointment**

5.—(1) A warrant of appointment as a commissioner for oaths shall be in Form No. 52 in Appendix A hereto, and shall, issue from the Lord Chief Justice's Office.

(2) A person appointed a commissioner for oaths shall not enter upon the duties of his office until his warrant of appointment has issued.

#### **Conditions of appointment**

6. Subject to the right of the Lord Chief Justice to specify the conditions, territory, duration or purpose of an appointment in a particular case, appointment as a commissioner for oaths shall be made in accordance with the following rules in this Part.

#### **Revocation and variation of appointment**

7.—(1) The Lord Chief Justice may at any time revoke the appointment of a commissioner for oaths or vary the conditions or limits of any such appointment.

(2) A commissioner for oaths shall be informed forthwith in writing by the Principal Secretary of any revocation or variation of his appointment.

#### **Solicitors and clerks of petty sessions**

8.—(1) A solicitor already in office as a commissioner for oaths who does not hold a current practising certificate shall cease to be a commissioner for oaths.

(2) A clerk of petty sessions who is a commissioner for oaths shall, on ceasing to act as clerk of petty sessions for a district specified in his warrant of appointment, cease to be a commissioner for oaths for that district.

(3) A clerk of petty sessions in office as a commissioner for oaths at the time of his appointment to another district may apply to the Lord Chief Justice for the issue of a new warrant of appointment entitling him to act as a commissioner for oaths for that district.

(4) Such application shall be made by letter addressed to the Principal Secretary.

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### III. NOTARIES PUBLIC

#### **Application for appointment**

9.—(1) An application for appointment as a notary public shall be made by sending to the Principal Secretary a memorial in Form No. 53 in Appendix A, together with a certificate in Form No. 54 in Appendix A hereto, signed by magistrates, traders and residents in a district in which the applicant carries on practice.

(2) The applicant shall send a copy of his memorial to every notary public practising in Northern Ireland.

#### **Objection to appointment**

10. A notary public practising in Northern Ireland may object to the appointment sought in letter to the Principal Secretary, setting forth the grounds of his objection and, before making any appointment, the Lord Chief Justice shall have regard to any such objection.

#### **Other considerations affecting appointment**

11. The Lord Chief Justice shall in any case, before making any appointment, have regard to—

- (a) the number of notaries public already practising in Northern Ireland, and
- (b) any other circumstances which he considers to be relevant.

#### **Warrant of appointment**

12.—(1) A warrant of appointment as a notary public shall be in Form No. 55 in Appendix A hereto, and shall issue from the Lord Chief Justice's Office.

(2) A person appointed a notary public shall not enter upon the duties of his office until his warrant of appointment has issued.

#### **Conditions of appointment**

13. Subject to the right of the Lord Chief Justice to specify the conditions, territory, duration or purpose of an appointment in a particular case, appointment as a notary public shall be made in accordance with the following rules in this Part.

#### **Qualification**

14. A notary public must be a practising solicitor of at least 6 years' standing.

#### **Extent of appointment**

15.—(1) A notary public may exercise his notarial functions anywhere in Northern Ireland.

(2) Notwithstanding any territorial limitation imposed by the terms of his appointment, paragraph (1) shall apply to any notary public who is in practice as such at the date of the commencement of this Order.

#### **Revocation and variation of appointment**

16.—(1) The Lord Chief Justice may at any time revoke the appointment of a notary public or vary the conditions or limits of any such appointment.

(2) A notary public shall forthwith be informed in writing by the Principal Secretary of any revocation or his appointment.

**Solicitor ceasing to practise**

17. A solicitor who ceases to practise as a solicitor shall cease to be a notary public.

**ORDER 108**  
**COURT BONDS**

**Application**

1. This Order applies to bonds given for the purposes of any proceedings in the High Court or the Court of Appeal.

**Persons to whom bonds may be given**

2. Bonds may be given to any master by his official title.

**Approved surety companies**

3. Bonds may be given by any of the surety companies listed in the Schedule hereto.

**Form of bond**

4. A bond shall be in Form No. 58 in Appendix A with such variations and additions as may be approved by the master to whom it is given.

**SCHEDULE**

**APPROVED SURETY COMPANIES**

Bank of Ireland  
Commercial Union Assurance Company Limited  
Eagle Star Insurance Company Limited  
Guardian, Royal Exchange Assurance Limited  
Legal & General Assurance Society Limited  
Norwich Union Fire Insurance Society Limited Phoenix Assurance Company Limited  
Provincial Insurance Company Limited  
Royal Insurance Company Limited  
Scottish Union and National Insurance Company  
The Century Insurance Company Limited  
The Insurance Corporation of Ireland Limited  
The Liverpool London & Globe Insurance Company Limited  
The London & Lancashire Insurance Company Limited  
The Prudential Assurance Company Limited The Sun Alliance & London Insurance Limited  
The Guarantee Society Limited

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## ORDER 109

[No Order made]

## ORDER 110

### THE OFFICIAL SOLICITOR

#### **Duties of Official Solicitor**

1.—(1) The Official Solicitor shall conduct such investigations and render such assistance as may be authorised under these Rules or required by any direction of a court for the purpose of assisting the court in the due administration of justice.

(2) The Official Solicitor shall perform such duties as have heretofore been discharged by the General Solicitor for Northern Ireland.

(3) The Official Solicitor may discharge any functions analogous to those performed by the Official Solicitor in England and Wales, which are not the responsibility of some other officer or person in Northern Ireland.

#### **Remuneration of Official Solicitor**

2.—(1) The remuneration of the Official Solicitor shall be paid out of such fund to which the proceedings relate or by such parties as the court may by order direct.

(2) Where there is no fund out of which such remuneration may be paid and there is no party to the proceedings against whom an effective order for the payment of such remuneration may be made the court may order such remuneration to be paid by the Lord Chancellor.

(3) Such remuneration shall be ascertained on taxation or measured.

## ORDER 111

### COMMITTAL UNDER SECTION 88 OF THE JUDGMENTS (ENFORCEMENT) ACT (NORTHERN IRELAND) 1969

#### **Interpretation**

1. In this Order, unless the context otherwise requires:—

“the Act of 1969” means the Judgment (Enforcement) Act (Northern Ireland) 1969(155)

“judgment” means any judgment, order or decree of any division of the High Court (other than an order made in matrimonial proceedings within the meaning of Rule 124 of the Matrimonial Causes Rules (Northern Ireland) 1979(156)) or an instalment order made under Section 31 of the Act of 1969 or of any inferior Court for the payment of money;

“judgment creditor” means a person entitled to enforce a judgment;

“debtor” means a person liable under a judgment;

“judgment summons” means a summons under Part VII of the Act of 1969.

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(155) 1969 c. 30 (N.I.)

(156) S.R. 1979 No. 89

### **Application**

2. An application for the issue of a judgment summons shall be made by filing an affidavit verifying the amount due under the judgment and showing how the amount is arrived at.

### **Judgment summons**

3. Every judgment summons shall be in Form No. 56. of Appendix A and shall be served on the debtor personally not less than 10 clear days before the hearing and at the time of service there shall be paid or tendered to the debtor a sum reasonably sufficient to cover his expenses in travelling to and from the court.

### **Evidence**

4. Evidence at the hearing may be given orally or by affidavit.

### **Debtor expenses, etc.**

5. Where the debtor appears at the hearing, the travelling expenses paid to him may, if the judge so directs, be allowed as expenses of a witness, but if the debtor appears at the hearing and no order of committal is made, the judge may allow to the debtor, by way of set-off or otherwise, his proper costs, including compensation for loss of time, as upon an attendance by a defendant at a trial in court.

### **Stay of execution**

6. If the judge makes an order for committal, he may direct its execution to be stayed on terms that the debtor pays to the judgment creditor the amount due, together with the costs of the judgment summons, either at a specified time or by instalments, in addition to any sums accruing due under the original judgment.

### **Removal of stay, etc.**

7. Where an order of committal is stayed on such terms as are mentioned in paragraph 6:—
- (a) all payments thereafter made shall be deemed to be made, first, in or towards the discharge of any sums from time to time accruing due under the original judgment and, secondly, in or towards the discharge of the debt in respect of which the judgment summons was issued and the costs of the summons; and
  - (b) the said order shall not be issued until the judgment creditor has filed an affidavit of default on the part of the debtor.

### **Application for further stay**

8. Where an order of committal has been made but execution of the order is stayed and the debtor subsequently desires to, apply for a further stay, he shall attend at or write to the Central Office and apply for the stay he requires, stating the reasons for his inability to comply with the order, and the Master shall fix a day for the hearing of the application by the judge and serve notice thereof on the judgment creditor and on the debtor by recorded delivery at least three clear days before the day fixed for the hearing.

### **Variation etc. of orders**

9. Any order made under this Order may be stayed, suspended, rescinded or varied by a subsequent order.

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### **Service of notice**

10. The judgment creditor shall serve notice personally on the debtor of the terms of any order made under this Order whether or not the debtor has attended the hearing.

### **Execution of order**

11. An order of committal shall be directed to any police officer or other person as the Court may direct for execution.

### **Discharge from custody**

12.—(1) A debtor taken into custody under an order of committal shall not be released from custody unless he pays to the police officer or the governor of the prison to which he is committed the full amount of the debt or instalment in respect of which such order was made and the costs of the order or upon receipt by the governor of the certificate of discharge prescribed under paragraph (5);

(2) A police officer or prison governor to whom a sum of money is paid by a debtor in accordance with paragraph (1) shall issue to the debtor a receipt therefor and shall indorse on the order of committal a certificate of the amount he has received and the date thereof and the police officer or prison governor shall sign his name at the foot of the certificate.

(3) Such sum shall be transmitted to the judgment creditor or his solicitor forthwith.

(4) The creditor or his solicitor on receiving the sum transmitted to him shall send a receipt therefor;

(5) The certificate prescribed for the purposes of section 90 of the Act of 1969 shall be in Form No. 57 in Appendix A, signed by the creditor, or his solicitor or a master, that there has been paid to or on account of the creditor by or on behalf of the debtor—

- (a) the debt or instalment in respect of which he was imprisoned;
- (b) the costs of the order of committal;

and the creditor or his solicitor shall, if the debtor so requires, furnish to the debtor a copy of such certificate.

## **ORDER 112**

### **APPLICATIONS FOR USE OF BLOOD TESTS IN DETERMINING PATERNITY**

#### **Interpretation**

1. In this Order—

“blood samples” and “blood tests” have the meanings assigned to them by Article 13 of the Family Law Reform (Northern Ireland) Order 1977(157);

“direction” means a direction for the use of blood tests under Article 8(1) of that Order;

“the proper officer” means the officer of the court who draws up a direction.

[E.r. 1]

### **Application for direction**

2.—(1) Except with the leave of the Court, an application in any proceedings for a direction shall be made on notice to every party to the proceedings (other than the applicant) and to any other person from whom the direction involves the taking of blood samples.

(2) If the application is made otherwise than at the hearing of the proceedings it shall be made by summons.

(3) Any notice or summons required by this rule to be served on a person who is not a party to the proceedings shall be served on him personally.

[E.r. 2]

### **Applications involving persons under disability**

3. Where an application is made for a direction in respect of a person (in this rule referred to as a person under disability) who is either—

(a) under 16, or

(b) suffering from a mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961(158) and incapable of understanding the nature and purpose of blood tests,

the notice of application or summons shall state the name and address of the person having the care and control of the person under disability and shall be served on him instead of on the person under disability.

[E.r. 3]

### **Joinder of person to be tested**

4. Where an application is made for a direction involving the taking of blood samples from a person who is not a party to the proceedings in which the application is made, the Court may at any time direct that person to be made a party to the proceedings.

[E.r. 4]

### **Service of direction and adjournment of proceedings**

5. Where the Court gives a direction in any proceedings, the proper officer shall send a copy to every party to the proceedings and to every other person from whom the direction involves the taking of blood samples and, unless otherwise ordered, further consideration of the proceedings shall stand adjourned until the court receives a report pursuant to the direction.

[E.r. 5]

### **Service of copy of report**

6. On receipt by the court of a report made pursuant to a direction, the proper officer shall send a copy to every party to the proceedings and to every other person from whom the direction involved the taking of blood samples.

[E.r. 6]

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## ORDER 113

### SUMMARY PROCEEDINGS FOR POSSESSION OF LAND

#### **Proceedings to be brought by originating summons**

1.—(1) Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

(2) All such proceedings shall be assigned to the Chancery Division.

[E.r. 1]

#### **Form of originating summons**

2.—(1) The originating summons shall be in Form No. 9 in Appendix A and no appearance need be entered to it.

[E.r. 2]

#### **Affidavit in support**

3. The plaintiff shall file in support of the originating summons an affidavit stating—

- (a) his interest in the land;
- (b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and
- (c) that he does not know the name of any person occupying the land who is not named in the summons.

[E.r. 3]

#### **Service of originating summons**

4.—(1) Where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit in support shall be served on him—

- (a) in accordance with Order 10, rule 5, or
- (b) by leaving a copy of the summons and of the affidavit, or sending them to him, at the premises, or
- (c) in such other manner as the Court may direct.

(2) The summons shall, in addition to being served on the named defendants (if any) in accordance with paragraph (1), be served, unless the Court otherwise directs, by—

- (a) affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises, and
- (b) if practicable, inserting through the letter-box at the premises a copy of the summons and a copy of the affidavit enclosed in a sealed envelope addressed to “the occupiers”.

(3) Order 28, rule 3, shall not apply to proceedings under this Order.

[E.r. 4]



### **Application by occupier to be made a party**

5. Without prejudice to Order 15, rules 6 and 10, any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant.

[E.r. 5]

### **Order for possession**

6.—(1) A final order shall not be made on the originating summons except by a judge in person and shall, except in case of urgency and by leave of the Court, not be made less than 5 clear days after the date of service.

(2) An order for possession in proceedings under this Order shall be in Form No. 33 in Appendix A.

[E.r. 6]

### **Setting aside order**

7. The judge may, on such terms as he thinks just, set aside or vary any order made in proceedings under this Order.

[E.r. 8]

## **ORDER 114**

### **REFERENCES TO THE EUROPEAN COURT**

#### **Interpretation**

1. In this Order—

“the Court” means the court by which an order is made and includes the Court of Appeal;

“the European Court” means the Court of Justice of the European Communities; and

“order” means an order referring a question to the European Court for a preliminary ruling under Article 177 of the Treaty establishing the European Economic Community, Article 150 of the Treaty establishing the European Atomic Energy Community or Article 41 of the Treaty establishing the European Coal and Steel Community.

[E.r. 1]

#### **Making of order**

2.—(1) An order may be made by the Court of its own motion at any stage in a cause or matter, or on application by a party before or at the trial or hearing thereof.

(2) Where an application is made before the trial or hearing, it shall be made by motion.

(3) In the High Court no order shall be made except by a judge in person.

[E.r. 2]

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

### **Schedule to order to set out request for ruling**

3. An order shall set out in a schedule the request for the preliminary ruling of the European Court, and the Court may give directions as to the manner and form in which the schedule is to be prepared.

[E.r. 3]

### **Stay of proceedings pending ruling**

4. The proceedings in which an order is made shall, unless the Court otherwise orders, be stayed until the European Court has given a preliminary ruling on the question referred to it.

[E.r. 4]

### **Transmission or order to the European Court**

5. When an order has been made, the Master (Queen's Bench and Appeals) shall send a copy thereof to the Registrar of the European Court; but in the case of an order made by the High Court, he shall not do so, unless the Court otherwise orders, until the time for appealing against the order has expired or, if an appeal is entered within that time, until the appeal has been determined or otherwise disposed of.

[E.r. 5]

### **Appeals from orders made by High Court**

6. An order made by the High Court shall be deemed to be a final decision, and accordingly an appeal against it shall lie to the Court of Appeal without leave; but the period within which a notice of appeal must be served under Order 59, rule 4(1), shall be 21 days.

[E.r. 6]