
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 322

The Family Proceedings Rules (Northern Ireland) 1996

Part II

Matrimonial causes

Evidence

Evidence generally

2.40. Subject to the provisions of rules 2.41 and 2.42 and of the Civil Evidence Act (Northern Ireland) 1971⁽¹⁾ and any other statutory provisions, any fact required to be proved by the evidence of witnesses at the trial of a cause begun by petition shall be proved by the examination of the witnesses orally.

Evidence by affidavit, etc

2.41.—(1) The court may order—

- (a) that any particular fact to be specified in the order may be proved by affidavit,
- (b) that the affidavit of any witness may be read at the trial on such conditions as the court thinks reasonable,
- (c) that the evidence of any particular fact shall be given at the trial in such manner as may be specified in the order and in particular—
 - (i) by statement on oath of information or belief, or
 - (ii) by the production of documents or entries in books, or
 - (iii) by copies of documents or entries in books, or
- (d) that not more than a specified number of expert witnesses may be called.

(2) An application to the Master for an order under paragraph (1) shall—

- (a) if no notice of intention to defend has been given, or
- (b) if the petitioner and every party who has given notice of intention to defend consents to the order sought, or
- (c) if the cause is undefended and the certificate of readiness has been lodged,

be made *ex parte* by filing an affidavit stating the grounds on which the application is made.

(3) Where an application is made before the trial for an order that the affidavit of a witness may be read at the trial or that evidence of a particular fact may be given at the trial by affidavit, the affidavit or a draft thereof shall be submitted with the application; and where the affidavit is sworn before the hearing of the application and sufficiently states the grounds on which the application is made, no other affidavit shall be required under paragraph (2).

(4) The court may, on the application of any party to a cause begun by petition, make an order for the examination on oath of any person, and R.S.C. Order 38, rule 7, and Order 39, rules 1 to

(1) 1971 c. 36 (N.I.)

14, (which regulate the procedure where evidence is to be taken by deposition) shall have effect accordingly with the appropriate modifications.

(5) On any interlocutory application made to the court evidence may be given by affidavit unless these Rules otherwise provide 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 attendance has been ordered, such affidavit shall not be used as evidence without the leave of the court.

(6) Medical and other expert evidence or the evidence of an inquiry agent to prove adultery may without leave, and in an undefended cause shall, be given by affidavit, but the court may, of its own motion or on the application of any party at the trial, order the attendance for cross-examination of the person making any such affidavit; and after such attendance has been ordered such affidavit shall not be used in evidence without the leave of the court.

(7) Where the statement of a co-respondent or a person named admitting his or her adultery with the respondent or of a respondent admitting his or her adultery with a person named or a co-respondent has been made in the presence and hearing of the person with whom adultery is admitted, the affidavit must contain an averment that the statement has been so made.

Evidence of marriage outside Northern Ireland

2.42.—(1) The celebration of a marriage outside Northern Ireland and its validity under the law of the country where it was celebrated may, in any family proceedings in which the existence and validity of the marriage is not disputed, be proved by the evidence of one of the parties to the marriage and the production of a document purporting to be—

- (a) a marriage certificate or similar document issued under the law in force in that country; or
- (b) a certified copy of an entry in a register of marriages kept under the law in force in that country.

(2) Where a document produced by virtue of paragraph (1) is not in English it shall, unless the court otherwise directs, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(3) This rule shall not be construed as precluding the proof of a marriage in accordance with the Evidence (Foreign, Dominion and Colonial Documents) Act 1933(2) or in any other manner authorised apart from this rule.

Rules 2.41 and 2.42 not to affect the power of the judge at the trial to refuse to admit any evidence

2.43. Nothing in rule 2.41 or 2.42 shall affect the power of the judge at the trial to refuse to admit any evidence if in the interest of justice he thinks fit to do so.

Issue of writ of subpoena or witness summons

2.44.—(1) A writ of subpoena in a cause pending in the High Court shall be issued out of the Matrimonial Office.

(2) A witness summons in a cause pending in a divorce county court shall be issued in any county court office.

Hearsay and expert evidence

2.45.—(1) R.S.C. Order 38, rules 5 and 19(1) shall not apply in relation to an undefended cause in the High Court.

(2) R.S.C. Order 38, rule 19 shall have effect in relation to a defended cause in the High Court as if—

(a) for the words “this Order” in paragraph (3), there were substituted a reference to rule 2.41 of these Rules; and

(b) paragraph (4) were omitted.

(3) Unless in any particular case the court otherwise directs, C.C.R. Order 38, rule 19(1), shall not apply in relation to an undefended cause pending in a divorce county court.