
STATUTORY INSTRUMENTS

1951 No. 1401

**The Reserve and Auxiliary Forces
(Protection of Civil Interests) Rules 1951**

PART IV

COUNTY COURTS

Enforcement of Judgments

Application for leave to proceed at hearing

21.—(1) Where leave to proceed is required, the plaintiff may apply for leave at the time of judgment on notice in Form 4.

(2) The notice may be served in any manner prescribed by Order VIII for the service of the summons in the action and, if not served with the summons, shall be served not less than seven clear days before the day fixed for the hearing.

Application for leave to proceed after judgment

22.—(1) Where leave to proceed is required and has not been obtained under Rule 21, an application for leave to proceed may be made at any time after judgment on notice in Form 5.

(2) The notice may be served in any manner prescribed by Order VIII for the service of the summons in the action and shall be served not less than seven clear days before the day fixed for the hearing of the application.

(3) The application may be heard and determined notwithstanding that there is no appearance by the plaintiff or defendant.

(4) The application may be heard and determined by the registrar whether the judgment was given by the judge or the registrar.

Application for declaratory order

23.—(1) Where judgment has been obtained against a defendant in an action, he may apply at the time of judgment or subsequently for a declaratory order in respect of the enforcement of the judgement.

(2) If the application is made after judgment, it shall be on notice under Order XIII, Rule 1.

(3) The application may be heard and determined notwithstanding that there is no appearance by the plaintiff or defendant.

(4) The application shall be heard by the judge:

Provided that, with leave of the judge, the registrar may make such order as he thinks just—

(a) if the judge is not present, or

(b) if the plaintiff does not oppose the making of the order.

Proceedings other than actions

24. Rules 21, 22 and 23 shall apply to a counterclaim and to proceedings other than an action as they apply to an action, with such modifications as may be necessary or as may be directed by the court.

Reference for inquiry and report

25.—(1) Where an application for leave to proceed or for a declaratory order in respect of the enforcement of a judgment is pending before any court (in this Rule called the home court) and the defendant resides or carries on business in the district of another court (in this Rule called the foreign court), the home court may, of its own motion, order the application to be referred to the registrar of the foreign court for inquiry and report.

(2) Where such an order is made, the registrar of the home court shall send the order with the documents in the action or matter to the registrar of the foreign court.

(3) On receipt of the order and documents the registrar of the foreign court shall give the defendant notice of a time and place at which the inquiry will be held, and, after the date fixed for the inquiry, shall make a report in writing and send it with the documents to the registrar of the home court.

Service of order

26. An order made on an application for leave to proceed or for a declaratory order in respect of the enforcement of a judgment shall be served by the registrar in accordance with Order XXIV, Rule 8:

Provided that it shall not be necessary to serve the order where unconditional leave to proceed is given or where the order is incorporated in the judgment.

Exercise of remedies

Proceedings for foreclosure

27.—(1) An application for leave to take a step in proceedings for foreclosure or sale in lieu of foreclosure shall be made on notice in Form 6.

(2) The provisions of Order VIII shall apply with the necessary modifications to the service of the notice as if it were a summons in an action for the recovery of land, so however that the notice shall be served not less than seven clear days before the day fixed for the hearing of the application.

(3) An application for a declaratory order in respect of the taking of such a step as aforesaid shall be made on notice under Order XIII, Rule 1.

Leave to distrain

28.—(1) An application for leave to distrain shall be made by originating application.

(2) The application shall be in Form 7 and the notice required by Order VI, Rule 4 (2) (c) (ii), to be served on the respondent with a copy of the application shall be in Form 8 in lieu of the form prescribed in that sub-paragraph.

(3) A person regularly employed by the applicant to collect the rent of the premises to which the application relates shall be deemed to be a person in the permanent and exclusive employ of the applicant within the meaning of Order VIII, Rule 2 (b) (ii).

- (4) Where service is effected otherwise than by a bailiff—
- (a) the documents shall be delivered to the respondent or to some person apparently not less than 16 years old at the premises to which the application relates, and
 - (b) the person effecting service shall make an indorsement to the effect of Form 31 in the County Court Rules, 1936(1), on the copy of the notice retained by him and shall state therein his qualification to serve the documents, and shall, within three days of the date of service or such further time as may be allowed by the registrar, file in the court office the indorsed copy of the notice and any unserved notice.
- (5) The day fixed for hearing the application need not be a court day, and the application may be heard and determined by the registrar, in court or in chambers, whether the judge is holding a court or not.
- (6) Where leave to distrain for the rent of any premises is required both by the Act and by the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, the application shall be made in accordance with these Rules and not in accordance with the Increase of Rent and Mortgage Interest (Restriction) Rules, 1920(2), as amended.
- (7) An order giving leave to distrain shall be in Form 9 and shall be served on the applicant and the respondent.

Other remedies

- 29.**—(1) An application—
- (a) under subsection (2) of section 2 for leave to exercise a remedy specified in paragraph (a) of that subsection (other than the levying of distress) or to institute proceedings for possession of mortgaged property, or under subsection (1) of section 25 for leave to exercise a remedy specified in paragraph (b) of that subsection; or
 - (b) for a declaratory order in respect of the exercise of any such remedy (including the levying of distress) or the institution of any such proceedings under the said subsection (2),

shall be made by originating application.

(2) An originating application for leave to exercise a remedy or to institute proceedings as aforesaid shall be in Form 7 and the notice required by Order VI, Rule 4 (2) (c) (ii), to be served on the respondent with a copy of the application shall be in Form 8 in lieu of the form prescribed in that subparagraph.

(3) Where default has been made in the payment of mortgage money or the performance of a mortgage obligation, then, without prejudice to the generality of any other provisions relating to the joinder of causes of action—

- (a) an application for leave to realise the security by selling the mortgaged property may be joined with an application for leave to take possession, or to institute proceedings for possession, of the property; and
- (b) an application for a declaratory order in respect of the realisation of the security by selling the mortgaged property may be joined with an application for a declaratory order in respect of the taking of possession, or the institution of proceedings for possession, of the property.

(4) The application shall be heard by the judge:

Provided that, with leave of the judge, the registrar may make such order as he thinks just—

- (a) if the judge is not present, or
- (b) if the respondent does not oppose the making of the order.

(1) I, p. 282.
(2) I, p. 1072.

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Power to dispense with notice of doubtful service

30. Where service of an originating application for leave to exercise a remedy or to institute proceedings to which Rule 28 or 29 applies has been effected by delivering the documents to some person other than the respondent, the registrar may, if it appears to him that that person has been entrusted with the management of the respondent's affairs in general, or of the premises or property to which the application relates, dispense with the notice of doubtful service prescribed by Order VIII, Rule 30 (1), and if the respondent does not appear on the day fixed for the hearing, the application may proceed, if the court thinks fit, notwithstanding anything in Rule 30 (2) of that Order.

General Provisions as to Procedure in the County Court

Certain rules in Part III to apply

31. Rules 13, 14 and 18 shall apply to proceedings in a county court as they apply to proceedings in the High Court with such modifications as may be necessary.

Notice to person affected by mortgage proceedings

32.—(1) Where a mortgagee applies for leave to exercise any of the rights or remedies mentioned in subsection (2) of section 2, he shall include in his application a statement showing—

- (a) the name of any person, not being a respondent to the summons, who would, to the knowledge of the applicant, be affected by the exercise of the right or remedy,
- (b) what the interest of that person is in the mortgaged property, and
- (c) if known to the applicant, whether that person is for the time being performing a period of relevant service,

and the registrar may direct that such person, or any other person who the registrar may think would be affected by the granting of the application, be given notice of the application.

(2) On the filing of an application which includes a statement under paragraph (1) of this Rule, the registrar may, after entering the application in the books of the court but before fixing a day for the hearing of the application, fix a day for the consideration by him of the question what persons (if any) are to be given notice of the application.

(3) Any person to whom notice is given and any other person claiming to be affected may apply on notice under Order XIII, Rule 1, for a declaratory order in respect of the exercise of the right or remedy.

Costs

33.—(1) No solicitor's charges shall be allowed as between party and party in connection with an application under Rule 21 or with an application under Rule 23 made at the time of judgment.

(2) Where costs are awarded in an application under Rule 22, 23, 24, 27 or 28, the costs shall be fixed and allowed without taxation, and if in any such application the party to whom costs have been awarded has employed a solicitor, the following provisions shall apply:—

- (a) Where the application is made under Rule 22, 23, 24 or 27, the amount to be fixed for the solicitor's charges shall be regulated by the scale on which the costs of the action were awarded, according to the following Table:—

Scale of Costs of the Action	Amount of Fixed Charges <i>s. d.</i>
Scale 1	5 0

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Scale of Costs of the Action	Amount of Fixed Charges <i>s. d.</i>
Scale 2	7 6
Scale 3	12 6

(b) Where the application is made under Rule 28, the amount to be fixed for the solicitor's charges shall be regulated by the sum sought to be distrained for at the date of the filing of the application according to the following Table:—

Sum sought to be distrained for	Amount of Fixed Charges <i>s. d.</i>
Exceeding £2 and not exceeding £10	5 0
Exceeding £10 and not exceeding £20	7 6
Exceeding £20	12 6

(c) The amount so fixed for solicitor's charges shall include all work done by the solicitor in connection with the preparation, service and hearing of the application.

(3) Where costs are awarded in an originating application under Rule 29, the costs shall be fixed and allowed without taxation, and the amount to be fixed for solicitor's charges shall be such amount as the registrar thinks reasonable.

Meaning of references to County Court Rules

34. In this Part of these Rules words have the same meaning as in the County Court Rules, 1936, and an Order and Rule referred to by number mean the Order and Rule so numbered in those Rules.