
STATUTORY INSTRUMENTS

1981 No. 1687

The County Court Rules 1981

ORDER 20

EVIDENCE

PART I

ADMISSIONS

Admission of other party's case

1. A party to an action or matter may give notice, by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party, and no costs incurred after receipt of the notice in respect of the proof of any matters which the admission renders it unnecessary to prove shall be allowed.

Notice to admit facts

2.—(1) A party to an action or matter may, not later than 14 days before the trial or hearing, serve on any other party a notice requiring him to admit, for the purpose of that action or matter only, such facts, or such part of his case, as may be specified in the notice.

(2) If the party served with a notice to admit facts under paragraph (1) does not deliver a written admission of the facts within 7 days after service of the notice on him, the costs of proving the facts shall be paid by him unless the court otherwise orders.

(3) An admission made in compliance with a notice under paragraph (1) shall not be used against the party by whom it was made in any action or matter other than the one for the purpose of which it was made or in favour of any person other than the one 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.

Notice to admit or produce documents

3.—(1) Without prejudice to rule 11 and any presumption of law as to the authenticity of a document, a party to an action or matter who desires to adduce any document in evidence may, not later than 14 days before the trial or hearing, serve on any other party a notice requiring him to admit the authenticity of the document.

(2) If the party served with a notice under paragraph (1) desires to challenge the authenticity of the document, he must, within 7 days after service of the notice, serve on the party by whom it was given a notice that he does not admit the authenticity of the document and requires it to be proved at the trial, and in that case the costs of proving the document shall be paid by him unless the court otherwise orders.

(3) A party who fails to give notice of non-admission under paragraph (2) shall be deemed to have admitted the authenticity of the document unless the court otherwise orders.

(4) A party to an action or matter may serve on any other party a notice requiring him to produce the document specified in the notice at the trial or hearing of the action or matter.

PART II

EVIDENCE GENERALLY

Evidence generally to be given orally and in open court

4. Subject to any provision made by or under any Act or rule and to any rule of law, any fact required to be proved at the hearing of an action or matter by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.

Evidence in chambers

5. In any proceedings in chambers evidence may be given by affidavit unless by any provision of these rules it is otherwise provided 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 in evidence without the leave of the court.

Evidence by affidavit on order

6.—(1) In any case to which rule 5 does not apply the court may, at or before the hearing of an action or matter, order that the affidavit of any witness may be read at the hearing if in the circumstances of the case it thinks it reasonable to do so.

(2) An order under paragraph (1) may be made on such terms as to the filing and giving of copies of the affidavit and as to the production of the deponent for cross-examination as the court thinks fit but, subject to such terms and to any subsequent order of the court, the deponent shall not be subject to cross-examination and need not attend the hearing for the purpose.

Use of affidavit on notice

7.—(1) Where a party desires to use at the hearing of an action or matter an affidavit which is not rendered admissible by rule 5 and in respect of which no order has been made under rule 6, he may, not less than 14 days before the hearing, give notice of his desire, accompanied by a copy of the affidavit, to the party against whom it is to be used, and unless that party, not less than 7 days after receipt of the notice, gives notice to the other party that he objects to the use of the affidavit, he shall be taken to have consented to its use and accordingly the affidavit may be used at the hearing.

(2) Where—

- (a) the defendant in a fixed date action has not delivered a defence within the time limited by Order 9, rule 2, or
- (b) the defendant in a default or fixed date action does not appear on a pre-trial review of the action,

evidence by affidavit shall be admissible in support of the plaintiff's claim without notice being given under paragraph (1), unless the court otherwise orders.

Evidence of particular facts

8. The court may, at or before the trial or hearing of any action or matter and on or before any application in the course of proceedings or any pre-trial review, order that evidence of any particular fact shall be given at the hearing of the action or matter or, as the case may be, on the application or pre-trial review in such manner as may be specified in the order, and in particular—

- (a) by the production of documents or entries in books, or
- (b) by copies of documents or entries in books, or
- (c) 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.

Savings and revocation or variation of orders

9.—(1) Nothing in rules 5 to 8 or in any order made thereunder shall affect the weight, if any, to be attached to a statement admissible in evidence under any of those rules or under any such order, or the power of the court, when the statement is tendered in evidence, to refuse to admit it if in the interest of justice the court thinks fit to do so.

(2) Subject to paragraph (3), any order under rules 5 to 8 (including an order made on appeal from the registrar to the judge) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the court made at or before the hearing of the proceedings.

(3) Nothing in paragraph (2) shall enable the registrar to revoke or vary an order made by the judge.

Form and contents of affidavit

10.—(1) Subject to the following paragraphs of this rule, the provisions of the R.S.C. with respect to—

- (a) the form and contents of an affidavit;
- (b) the making of an affidavit by two or more deponents or by a blind or illiterate deponent;
- (c) the use of any affidavit which contains an interlineation, erasure or other alteration or is otherwise defective;
- (d) the striking out of any matter which is scandalous, irrelevant or otherwise oppressive;
- (e) the insufficiency of an affidavit sworn before any agent, partner or clerk of a party's solicitor; and
- (f) the making and marking of exhibits to an affidavit,

shall apply in relation to an affidavit for use in a county court as they apply in relation to an affidavit for use in the High Court.

(2) Before any affidavit is used in evidence it must be filed, but in an urgent case the court may make an order upon the undertaking of a party to file, within such time as the court may require, any affidavit used by him before it is filed.

(3) Every affidavit must be indorsed with a note showing on whose behalf it is filed and the court may refuse to accept an affidavit which is not so indorsed.

(4) Unless the court otherwise orders, an affidavit may be used notwithstanding that it contains statements of information or belief.

(5) Every affidavit shall state which of the facts deposed to are within the deponent's knowledge and which are based on information or belief and shall give, in the former case, his means of knowledge and, in the latter case, the sources and grounds of the information or belief.

Documents produced from proper custody

11.—(1) Where a document which would, if duly proved, be admissible in evidence is produced to the court from proper custody, it shall be admitted without further proof if—

- (a) in the opinion of the court it appears genuine; and

(b) no objection is taken to its admission.

(2) If objection is taken to the admission of any document so produced, the court may adjourn the hearing of the action or matter for proof of the document and, if it is proved, the party objecting shall pay the costs occasioned by the objection unless the court otherwise orders.

PART III

—SUMMONING AND EXAMINATION OF WITNESSES

Witness summons

12.—(1) Where a party to an action or matter desires a person to be summoned as a witness to give oral evidence or to produce a document in his possession, custody or power, the proper officer shall, on an application made by the party in accordance with paragraph (2), issue a witness summons, together with a copy.

(2) The applicant shall file a request for the issue of the summons and, if the summons is to be served by an officer of the court, deposit in the court office the money to be paid or tendered under paragraph (7).

(3) The summons shall contain the name of one witness only but may, as regards such name, be issued in blank.

(4) The summons shall be served on the witness a reasonable time before the return day and, subject to paragraph (5), service shall be effected by delivering the summons to the witness personally.

(5) Where the applicant or his solicitor gives a certificate for postal service, the summons shall, unless the registrar otherwise directs, be served on the witness by an officer of the court sending it to him by first-class post at the address stated in the request for the summons and, unless the contrary is shown, the date of service shall be deemed to be the seventh day after the date on which the summons was sent to the witness.

(6) Where the summons has been served by post, the witness shall not be fined for failing to appear on the return day unless the judge is satisfied that—

- (a) the summons came to his knowledge in sufficient time for him to appear on that day, and
- (b) the money to be paid or tendered under paragraph (7) was sent to him with the summons.

(7) At the time of service of the summons there shall be paid or tendered to the witness the sum of £6 for a police officer and £8.50 for any other person and, in addition, a sum reasonable sufficient to cover his expenses in travelling to and from the court.

Evidence by deposition

13.—(1) The court may, in any action or matter where it appears necessary for the purposes of justice, make an order in the appropriate form for the examination on oath of any person (in this rule called “the witness”) at any place in England and Wales.

(2) The examination may be ordered to take place before any of the following persons (in this rule called “the examiner”), that is to say—

- (a) any officer of the court making the order, or
- (b) any officer of the court for the district in which the witness resides or carries on business, or
- (c) such other person as the court may appoint.

(3) The order shall specify the day and place fixed for the examination and shall be served on the witness personally a reasonable time before the day so fixed and at the same time there shall be paid or tendered to the witness the sums prescribed by rule 12(7).

A copy of the order shall also be sent to every party to the action or matter.

(4) Where the examination is to take place before an officer of a court other than the court making the order, the proper officer of the last-mentioned court shall supply the proper officer of the first-mentioned court with sufficient copies of the order to enable paragraph (3) to be complied with.

(5) Subject to the following paragraphs of this rule, the provisions of the R.S.C. with respect to—

- (a) the documents to be furnished to the examiner,
- (b) the conduct of the examination,
- (c) the making of objections to questions put to the witness,
- (d) the taking and signing of the deposition,
- (e) the making of a special report by the examiner, and
- (f) the reception of the deposition in evidence at the hearing of the action or matter,

shall apply in relation to the examination of a witness pursuant to an order under paragraph (1) as they apply in relation to the examination of a witness pursuant to an order made in a cause or matter in the High Court.

(6) Order 29, rule 1, shall have effect in relation to an order under paragraph (1) as if it were an order in the nature of an injunction.

(7) If the witness refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document, a certificate of his refusal, signed by the examiner, shall be filed in the office of the court by which the order under paragraph (1) was made, and the party by whom the attendance of the witness was required may apply to the court ex parte for an order requiring the witness to be sworn or to answer any question or produce any document, as the case may be.

(8) The original deposition of the witness, authenticated by the signature of the examiner, shall be filed in the office of the court by which the order under paragraph (1) was made.

PART IV

—HEARSAY EVIDENCE

Interpretation and application

14.—(1) In this Part of this Order “the Act of 1968” means the Civil Evidence Act 1968 and any expressions used in this Part of this Order and in Part I of the Act of 1968 have the same meanings in this Part of this Order as they have in the said Part I.

(2) This Part of this Order shall apply in relation to the trial or hearing of an issue arising in an action or matter and to a reference under section 93 of the Act as it applies to the trial or hearing of an action or matter.

(3) Nothing in this Part of this Order shall apply in relation to a reference under section 92 of the Act.

Notice of intention to give certain-statements in evidence

15.—(1) Subject to the provisions of this rule, a party to an action or matter who desires to give in evidence at the trial or hearing any statement which is admissible in evidence by virtue of section 2, 4 or 5 of the Act of 1968 shall, not less than 14 days before the day fixed for the trial or hearing, give notice of his desire to do so to the registrar and to every other party.

(2) Unless in any particular case the court otherwise directs, paragraph (1) shall not apply to an action or matter in which no defence or answer has been filed; and where a defence or answer is filed less than 14 days before the day fixed for the trial or hearing, any party required to give notice

pursuant to paragraph (1) shall apply to the court for an adjournment of the trial or hearing or for such other directions as may be appropriate.

(3) Paragraph (1) shall not apply in relation to any statement which is admissible as evidence of any fact stated therein by virtue not only of the said section 2, 4 or 5 but by virtue also of any other statutory provision within the meaning of section 1 of the Act of 1968.

(4) Paragraph (1) shall not apply in relation to any statement 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.

(5) 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, without prejudice to paragraph (3), paragraph (1) shall not apply in relation to any statement which any party to the proceedings desires to have included in any affidavit to be used on his behalf in the proceedings.

Application of R.S.C

16. R.S.C. Order 38, rules 22 to 25, shall apply to a notice under the last foregoing rule as they apply to a notice under rule 21 of the said Order 38.

Counter-notice requiring person to be called as a witness

17.—(1) Subject to paragraphs (2) and (3), any party on whom a notice under rule 15 is served may, within 7 days after service of the notice on him, give to the proper officer and to the party who gave the notice a counter-notice requiring that party to call as a witness at the trial or hearing any person (naming him) particulars of whom are contained in the notice.

(2) Where any notice under rule 15 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 unless he contends that the 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 15 relates is one to which rule 19 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 19 for directions with respect to the admissibility of that statement.

(4) If any party by whom a notice under rule 15 is served fails to comply with a counter-notice duly served on him under this rule, then, unless any of the reasons specified in paragraph (5) applies in relation to the person named in the counter-notice, and without prejudice to the powers of the court under rule 20, the statement to which the notice under rule 15 relates shall not be admissible at the trial or hearing as evidence of any fact stated therein by virtue of section 2, 4 or 5 of the Act of 1968, as the case may be.

(5) The reasons referred to in paragraph (4) 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.

Determination of question whether person can or should be called as a witness

18.—(1) Where a question arises whether any of the reasons specified in rule 17(5) applies in relation to a person particulars of whom are contained in a notice under rule 15, the court may, on the application of any party to the action or matter, determine that question before the trial or hearing

or give directions for it to be determined before the trial or hearing and for the manner in which it is to be determined.

(2) Unless the court otherwise directs, notice of any application under paragraph (1) must be served on every other party to the action 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 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.

Directions with respect to statement made in previous proceedings

19.—(1) Where a party has given notice in accordance with rule 15 that he desires to give in evidence at the trial or hearing—

- (a) a statement falling within section 2(1) of the Act of 1968 which was made by a person, whether orally or in a document, in the course of giving evidence in some other legal proceedings (whether civil or criminal), or
- (b) a statement falling within section 4(1) of the Act of 1968 which is contained in a record of direct oral evidence given in some other legal proceedings (whether civil or criminal), any party to the action or matter may apply to the court for 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.

Power of court to allow statement to be given in evidence

20.—(1) Without prejudice to sections 2(2)(a) and 4(2)(a) of the Act of 1968 and rule 19, the court may, if it thinks it just to do so, allow a statement falling within section 2(1), 4(1) or 5(1) of the Act of 1968 to be given in evidence at the trial or hearing of an action or matter notwithstanding—

- (a) that the statement is one in relation to which rule 15(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 17.

(2) Without prejudice to the generality of paragraph (1), the court may exercise its power under that paragraph to allow a statement to be given in evidence at the trial or hearing 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.

Restriction on adducing evidence as to credibility of maker etc. of certain statements

21. Where—

- (a) a notice given under rule 15 in an action or matter relates to a statement which is admissible by virtue of section 2 or 4 of the Act of 1968, and
- (b) the person who made the statement, or, as the case may be, 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 action or matter, and
- (c) none of the reasons mentioned in rule 17(5) applies so as to prevent the party who gave the notice from calling that person as a witness,

no other party to the action 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 7 of the Act of 1968 unless he gave a counter-notice under rule 17 in respect of that person or applied under rule 19 for a direction that that person be called as a witness at the trial or hearing of the action or matter.

Notice required of intention to give evidence of certain inconsistent statements

22.—(1) Where a person, particulars of whom were contained in a notice given under rule 15, is not to be called as a witness at the trial or hearing, any party who is entitled and intends to adduce in relation to that person any evidence which is admissible for the purpose mentioned in section 7(1)(b) of the Act of 1968 must, not more than 7 days after service of that notice on him, give notice of his intention to do so to the proper officer and to the party who gave the notice under rule 15.

(2) R.S.C. Order 38, rule 22(1) and (2), shall apply to a notice under this rule as if the notice were a notice under rule 15 and the statement to which the notice relates were a statement admissible by virtue of section 2 of the Act of 1968.

(3) The court may, if it thinks it just to do so, allow a party to give in evidence at the trial or hearing of an action or matter any evidence which is admissible for the purposes mentioned in the said section 7(1)(b) notwithstanding that that party has failed to comply with the provisions of paragraph (1).

Costs

23. If—

- (a) a party to an action or matter serves a counter-notice under rule 17 in respect of any person who is called as a witness at the trial of the action 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 38, and, in particular, to rule 6 thereof, 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.

Exercise of jurisdiction

24. Order 1, rule 8, shall have effect in relation to the jurisdiction of the court under sections 2(2)(a), 2(3), 4(2)(a) and 6(1) of the Act of 1968 as it has effect in relation to any jurisdiction conferred by these rules.

Evidence of findings on foreign law

25.—(1) Subject to the provisions of this rule, a party who intends to adduce in evidence a finding or decision on a question of foreign law by virtue of section 4(2) of the Civil Evidence Act 1972 shall, not less than 14 days before the day fixed for the trial or hearing or within such other period as the court may specify, serve notice of his intention on every other party to the proceedings.

(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 action 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.

(4) Unless in any particular case the court otherwise directs, paragraph (1) shall not apply to an action or matter in which no defence or answer has been filed.

Statements of opinion

26. Where a party to an action or matter desires to give in evidence by virtue of Part I of the Act of 1968 as extended by section 1(1) of the Civil Evidence Act 1972, a statement of opinion other than a statement to which Part III of this Order applies, the provisions of rules 14 to 24 of this Order (except so much of rule 16 as applies R.S.C. Order 38, rule 24) shall apply with such modifications as the court may direct or the circumstances of the case may require.

PART V

—EXPERT EVIDENCE

Restrictions on adducing expert evidence

27.—(1) Except with the leave of the court or where all parties agree, no expert evidence may be adduced at the trial or hearing of an action or matter, unless the party seeking to adduce the evidence has applied to the court to determine whether a direction should be given under rule 37, 38 or 41 (whichever is appropriate) of R.S.C. Order 38, as applied by rule 28 of this Order, and has complied with any direction given on the application.

(2) Nothing in paragraph (1) shall apply to expert evidence which is permitted to be given by affidavit or which is to be adduced in an action or matter in which no defence or answer has been filed or in proceedings referred to arbitration under section 92 of the Act.

(3) Nothing in paragraph (1) shall affect the enforcement under any other provision of these rules (except Order 29, rule 1) of a direction given under this Part of this Order.

Application of R.S.C

28. R.S.C. Order 38, rules 37 to 44 shall apply in relation to an application under rule 27 of this Order as they apply in relation to an application under rule 36(1) of the said Order 38.