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STATUTORY INSTRUMENTS

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**1951 No. 1401**

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

**PART III**

**HIGH COURT**

*Enforcement of Judgments*

**Application for leave to proceed**

**9.**—(1) Where the plaintiff in an action obtains leave to enter judgment or obtains judgment at the trial and leave to proceed is required, he may apply for leave to proceed at the time when leave to enter judgment is given or at the trial when judgment is given, as the case may be, on notice given in accordance with the provisions of the next following paragraph.

(2) The notice shall be in Form 1 and shall be served on the defendant not less than four clear days before the hearing of the application or summons for leave to enter judgment or before the trial, as the case may be, unless the court or a judge otherwise orders.

(3) Where leave to proceed is required and has not been obtained under paragraph (1) of this Rule, the plaintiff may, at any time after judgment, apply for leave to proceed by summons in the proceedings in Form 2.

**Application for declaratory order**

**10.**—(1) Where the plaintiff in an action obtains leave to enter judgment or obtains judgment at the trial, the defendant may, at the time when leave to enter judgment is given or at the trial when judgment is given, as the case may be, apply for a declaratory order in respect of the enforcement of the judgment.

(2) If a declaratory order has not been obtained under paragraph (1) of this Rule, the defendant may, at any time after judgment, apply by summons in the proceedings for a declaratory order in respect of the enforcement of the judgment.

**Proceedings other than actions**

**11.** Rules 9 and 10 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 or a judge.

## *Exercise of Remedies*

### **Application for leave or for a declaratory order**

**12.—**(1) An application—

- (a) under subsection (2) of section 2 for leave to exercise a remedy specified in paragraph (a) of that subsection or to institute proceedings specified in paragraph (b) thereof, 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 or the institution of any such proceedings under the said subsection (2),

shall be made by originating summons.

(2) The summons shall be issued out of the Division of the High Court which ordinarily deals with proceedings the subject-matter of which is similar to the subject-matter of the application:

Provided that where a summons has been issued out of a Division which, in the opinion of the court or a judge, is inappropriate, the court or judge may order that the proceedings shall either continue in that Division or be transferred to the Division out of which the summons ought to have been issued.

(3) The respondent shall not be required to enter an appearance to the summons, and accordingly Rule 4E of Order LIV of the Rules of the Supreme Court shall apply thereto.

(4) In the Chancery Division any application under the Act affecting mortgaged land and any action affecting the same mortgaged land shall be assigned to the same group.

(5) Where in the course of proceedings relating to any mortgage (whether before or after judgment) a party to the proceedings desires to apply for—

- (a) leave under subsection (2) of section 2 to exercise in relation to the mortgaged property any right or remedy specified in that subsection, or
- (b) a declaratory order in the respect of the exercise in relation to the mortgaged property of any right or remedy specified in the said subsection,

the application may, if the respondent thereto is a party to the proceedings, be made by summons in the proceedings.

(6) An application for leave under paragraph (b) of subsection (2) of section 2 to take a step in proceedings for foreclosure or sale in lieu of foreclosure, or for a declaratory order in respect of the taking of such a step as aforesaid, shall be made by summons in the proceedings.

(7) A summons under paragraph (1), (5) or (6) of this Rule, other than a summons for a declaratory order, shall include a statement in Form 3.

(8) Where an originating summons—

- (a) for leave to exercise a remedy under paragraph (a) of subsection (2) of section 2, or to institute proceedings for possession of mortgaged property, or for leave to exercise a remedy under paragraph (b) of subsection (1) of section 25; or
- (b) for a declaratory order in respect of the exercise of a remedy under the said paragraph (a) or of the institution of any such proceedings as aforesaid,

relates to land or goods within the district of a district registry, the originating summons may be issued in the district registry.

(9) Where the registered office of a company is situated within the district of a district registry, an originating summons for leave to appoint a receiver for the debenture holders of the company, or for a declaratory order in respect of the appointment of such a receiver, may be issued in the district registry.

(10) Nothing in the last two foregoing paragraphs shall be construed as restricting the jurisdiction of the district registry at Liverpool or Manchester.

### *General Provisions as to Procedure*

#### **Attendance of other creditors**

**13.**—(1) Where upon an application for leave to exercise a right or remedy specified in subsection (1), (2) or (3) of section 2, it appears to the court or a judge that the defendant or respondent desires that his liabilities, other than the liability to which the application relates, should be taken into account, and that he has given notice of the application to persons having claims against him in respect of those other liabilities, the court or judge may permit any such person to be present at the hearing of the application, and may permit him to make representations in relation to the subject-matter of the application:

Provided that nothing in this Rule shall be construed as preventing the court or judge from taking a liability into account by reason only of the fact that notice of the application has not been given by the defendant or respondent to the person having a claim against him in respect of that liability.

(2) The last foregoing paragraph shall apply to an application for a declaratory order as if for the reference to the respondent there was substituted a reference to the applicant.

#### **Appointment of receiver**

**14.**—(1) Where a mortgagee of a dwelling-house has, in relation to the mortgage or the dwelling-house, commenced proceedings for leave to exercise any of the rights or remedies specified in subsection (2) of section 2 and he satisfies the court or a judge that prompt service of the summons cannot be effected or that it is otherwise expedient, the court or a judge may, upon the ex parte application of the mortgagee, give leave to exercise any remedy which may be available to him by way of the appointment of a receiver of the rents and profits, or the taking of possession, of the mortgaged dwelling house.

(2) Leave may be given for the appointment of a receiver subject to such conditions as the court or a judge may think fit to impose, and, without prejudice to the generality of this provision, the court or a judge may require the mortgagee to give an undertaking—

- (a) to remove a receiver appointed, if so directed by the court or judge;
- (b) to direct the receiver to pay to such person as the court or judge may direct any sums which may become applicable in or towards the discharge of the principal money due under the mortgage in accordance with paragraph (v) of section 109 (8) of the Law of Property Act, 1925.

#### **Notice to persons affected by mortgage proceedings**

**15.**—(1) Where a mortgagee applies for leave to exercise any of the rights or remedies mentioned in subsection (2) of section 2, he shall, on applying at the chambers of the judge for an appointment to hear the application, leave at chambers with a copy of the summons 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 court or a judge may direct that such person or any other person who the court or judge may think would be affected by the granting of the application shall be given notice of the application.

(2) Any person to whom notice is given and any other person claiming to be affected may apply by summons in the proceedings for a declaratory order in respect of the exercise of the right or remedy.

### **Removal to district registry**

**16.** Where a defendant to a cause or matter proceeding in London resides or carries on business within the district of a district registry and any question under these Rules arises in or in relation to the cause or matter, the court or a judge may, on or without an application for that purpose, order the cause or matter to be removed to the district registry, if in the circumstances the court or judge thinks it just to do so.

### **Service**

**17.—**(1) Except as otherwise provided in this Rule, service of every summons and notice under this Part of these Rules shall be personal service, and accordingly the Rules of the Supreme Court relating to personal service, including Order LXVII, Rules 5 and 6 (which relate to the manner of service and substituted service), shall apply.

(2) Where in any action the defendant has entered an appearance, notice in Form 1 may be delivered or sent to the address for service instead of being served personally.

(3) No proof of service of a summons shall be required if the respondent by his solicitor undertakes in writing to accept service and to attend upon the hearing.

(4) Where a defendant or respondent on whom a summons or notice (including notice of the further hearing of an originating summons under Rule 12) is to be served is for the time being performing a period of relevant service, the summons or notice may, by leave of the court or a judge, be served by delivering it—

- (a) to the wife of the defendant or respondent if it appears to the court or judge that she has been entrusted with the management of the defendant's or respondent's affairs in general, or of the premises or property to which the summons relates, or
- (b) to any other person who appears to the court or judge to have been so entrusted.

(5) Where a summons for leave to exercise any right or remedy specified in subsection (1), (2) or (3) of section 2 or subsection (1) of section 25 relates to land, the summons may, by leave of the court or judge, in a case of vacant possession, if service cannot be effected in any other manner, be served by posting a copy of the summons upon the door of the dwelling-house or other conspicuous part of the property or, if the summons relates to more than one dwelling-house or property, upon the door of every dwelling-house or other conspicuous part of every property to which the summons relates.

(6) If on any application in the Chancery Division for leave to exercise any such right or remedy as aforesaid the judge in person is satisfied that service cannot be effected in accordance with this Rule and is of opinion that in the interests of justice an order ought to be made, he may dispense with service of the application on the person named as respondent to the application or may direct notice of the application to be given to any person who in his opinion ought to have notice thereof.

(7) Where in the course of proceedings the defendant or respondent or any person mentioned in paragraph (2) of Rule 15 applies by summons for a declaratory order in respect of the exercise of any such right or remedy as aforesaid, the summons may be served in accordance with Order LXVII, Rule 2, of the Rules of the Supreme Court (which relates to service at the address for service).

### **Application on behalf of service man**

**18.—**(1) Where a person who would be entitled to apply for a declaratory order is for the time being performing a period of relevant service, the court or a judge may, for the purpose of enabling him to obtain the protection afforded by subsection (8) or (9) of section 3, treat as an application

made by him for a declaratory order an application for that purpose made on his behalf by his wife or by any other person acting in good faith in his interest.

(2) An application so made on behalf of a person performing relevant service shall be treated for the purposes of sub-paragraph (ii) of paragraph (c) of subsection (1) of section 3 as an application made by that person, unless the court or a judge on the hearing of the application otherwise determines.

### **Representatives**

**19.**—(1) Where a summons or notice is served in manner provided by paragraph (4) of Rule 17 or an application is made in manner provided by paragraph (1) of Rule 18, the person to whom the summons or notice is delivered or by whom the application is made, as the case may be (in this Rule called “the representative”), shall be entitled to attend and be heard at the hearing of the summons as if he were the respondent or the person on whose behalf the application is made.

(2) If the court or a judge is of opinion that the representative has acted unreasonably in opposing, making or prosecuting the application, the court or judge may make an order for payment by him of the costs of any other party, but save as aforesaid the representative shall not be personally liable for such costs.

### **Costs**

**20.** Where costs are awarded on any application under these Rules, the costs shall, unless otherwise ordered, be fixed and allowed without taxation according to such table as may from time to time be prescribed by the Masters of the Division to which the application is assigned.