

SCHEDULE 1

The Rules of the Supreme Court (Northern Ireland) 1980 COURT OF APPEAL ETC.

ORDER 62

COSTS

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unless the Court otherwise directs, be entitled to his costs of the counterclaim or his costs occasioned by the claim withdrawn, as the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.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—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (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,

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⁽¹⁾ or section 31 or 32 of the Administration of Justice Act 1970⁽²⁾, 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⁽³⁾ 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

(1) 1969 c. 58
(2) 1970 c. 31
(3) 1868 c. 54

- (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]

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(4);
- (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(5), 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

(4) 1943 c. 39

(5) 1949 c. 87

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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;
- (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.rr. 9, 10]

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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.

(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(6) 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.

(6) 1849 c. 53

(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.

(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.