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STATUTORY RULES OF NORTHERN IRELAND

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**1981 No. 225**

**County Court Rules (Northern Ireland) 1981**

We, the County Court Rules Committee, appointed by the Lord Chancellor under Article 46 of the County Courts (Northern Ireland) Order 1980(1), in exercise of the powers conferred on us by Article 47 of that Order and all other powers enabling us in that behalf, hereby make the following rules:—

**ORDER 1**

**Where proceedings may be commenced**

**Actions generally**

1.—(1) Except as otherwise provided by any enactment including Order 26 Rule 2, an action may, irrespective of the place of residence of any defendant, be commenced—

- (a) in a court for the division in which the defendant or one of the defendants resides or carries on business; or
- (b) subject to the succeeding paragraphs of this Rule, in a court for the division in which the cause of action wholly or in part arose.

(2) Where the plaintiff sues as the assignee of a debt or other legal thing in action, the action may be commenced in any court in which, but for the assignment, the action might have been commenced, but in no other court.

(3) Where a plaintiff relies on paragraph (1)(b) he shall set out in his civil bill the facts on which he relies as giving the court jurisdiction.

**Actions for recovery of, and in relation to, land**

2.—(1) Proceedings (not being proceedings to which paragraph (2) applies)—

- (a) for the recovery of land (whether with or without a claim for rent or mesne profits); or
- (b) in which the title to any land comes in question; or
- (c) for the redemption of any mortgage upon any land; or
- (d) for enforcing any mortgage, charge or lien upon any land; or
- (e) for the recovery of money secured by any mortgage, charge or lien upon any land; or
- (f) otherwise relating to land (not being proceedings for the recovery only of rent or mesne profits);

shall be commenced in a court for the division in which the land or any part thereof is situate.

(2) Without prejudice to Rules 3, 4, 5, 7 and 8, proceedings specified in those Rules and relating wholly or partly to land may be commenced in a court for the division in which the land or any part thereof is situate;

#### **Proceedings in relation to trusts**

3. Proceedings in relation to any trust (including a charitable trust) or arising under the Trustee Act (Northern Ireland) 1958<sup>(2)</sup> may be commenced in a court for the division in which the persons instituting the proceedings, or the trustees or any one of such persons or of the trustees, reside or resides or in the court in which any fund to which the proceedings relate has been lodged.

#### **Proceedings in relation to the estate of a deceased person**

4. Proceedings for the administration of or otherwise in relation to the estate of a deceased person may be commenced in a court for the division in which that person last resided or carried on business, or in which his executors or administrators or any one of them reside or resides.

#### **Partnership proceedings**

5. Proceedings for the taking of a partnership account or for the dissolution or winding-up of a partnership may be commenced in a court for the division in which the partnership business was or is carried on or where the defendant or any one of the defendants resides or carries on business.

#### **Proceedings under the Settled Land Acts 1882 to 1890**

6. Proceedings under the Settled Land Acts 1882 to 1890 may be commenced in a court for any division in which is situate any part of the land which is to be dealt with by the court or from which the capital money to be dealt With by the court arises under those Acts or in connection with which the personal chattels to be dealt with by the court are settled.

#### **Proceedings under the Married Women's Property Act 1882, s. 17**

7. Proceedings under section 17 of the Married Women's Property Act 1882<sup>(3)</sup> may be commenced in a court for the division in which either party to the proceedings resides.

#### **Proceedings in relation to minors**

8. Proceedings relating to the maintenance or advancement or for the protection of the property of minors or for the payment out of court of funds standing to the credit of minors may be commenced in a court for the division in which the minors or any one of them reside or resides or in the court in which any money to which the proceedings relate has been lodged as may be appropriate.

#### **Probate proceedings**

9. Proceedings relating to the grant or revocation of probate or letters of administration in respect of the estate of a deceased person shall be commenced in a court for the division in which that person was ordinarily resident at the time of his death.

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(2) 1958 c. 23 (N.I.)

(3) 1882 c. 75

### **Proceedings under the Legitimacy Acts (Northern Ireland) 1928 to 1961**

10. Proceedings under the Legitimacy Acts (Northern Ireland) 1928 to 1961 may be commenced in a court for the division in which the petitioner resides or in which the marriage leading to the legitimation took place or, if neither the residence of the petitioner nor the place of marriage is situate in Northern Ireland, then in the Belfast Recorder's Court.

### **Proceedings for the construction of deeds, wills, etc.**

11. Proceedings by way of equity civil bill for the construction of a deed, will or other written instrument and for a declaration of the rights of the persons interested therein may be commenced in a court for the division in which—

- (a) the defendant or one of the defendants resides or carries on business; or
- (b) the subject-matter of the application or a substantial part thereof is situate.

### **Proceedings commenced by petition**

12. Where proceedings are required to be by petition and no other provision is made by any enactment as to the court in which the proceedings are to be commenced, Rule 11 shall apply with the necessary modifications.

### **Proceedings by or against a judge, circuit registrar, circuit administrator or chief clerk**

13.—(1) A judge, circuit registrar, circuit administrator or chief clerk may sue and be sued in accordance with these Rules, but if the court in which but for this Rule the action would be commenced is a court of which he is the judge, circuit registrar, circuit administrator or chief clerk, the action shall not be commenced in that court but in some other court of which he is not such judge or officer.

(2) Nothing in this Rule shall affect any alternative right to commence the action in some other court of which the judge, circuit registrar, circuit administrator or chief clerk suing or being sued is not the judge, circuit registrar, circuit administrator or chief clerk.

### **Proceedings by and against the Crown**

14. For the purposes of this Order, the Crown shall be deemed to reside within each county court division.

## **ORDER 2**

### **Joinder of causes of action**

#### **Generally**

1. Save as otherwise provided in this Order the plaintiff may unite in the same action several causes of action and—

- (a) claims by or against husband and wife may be joined with claims by or against either of them separately;
- (b) claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator;

- (c) claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

**Assignee in bankruptcy and recovery of land**

- 2. Except by leave of the judge—
  - (a) claims by an assignee in bankruptcy as such shall not be joined with any claim by him in any other capacity;
  - (b) no cause of action shall be joined with an action for the recovery of land except claims for mesne profits or arrears of rent or double value of the land claimed or any part thereof or for damages for breach of any contract under which it is held or for any wrong or D injury to it or for payment of any principal money or interest secured by a mortgage or charge on that land or any part thereof.

**Claim for possession in action for sale or redemption of mortgaged property**

3. Nothing in this Order shall prevent a plaintiff in an action for sale or redemption of mortgaged property from asking for or obtaining an order against a defendant for delivery of possession of the property on or after the final order for sale or redemption.

**Separate hearings may be ordered**

4. If, at any time, it appears to the judge that any causes of action joined in one action cannot be conveniently heard and disposed of together, he may order separate hearings, or may exclude any cause of action and order any consequential amendments to be made and may make such order as to costs as may be just.

**ORDER 3**

**Parties to proceedings**

**PART I**

**GENERALLY**

**Who may be joined as plaintiffs**

1.—(1) All persons may be joined as plaintiffs in one action in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if they brought separate actions, any common question of law or fact would arise but if, on the application of any defendant, it appears that any joinder may embarrass or delay the hearing, the judge may order separate hearings, or make such other order as he thinks fit.

(2) A decree may be given for any plaintiff for the relief to which he is entitled, without any amendment, but any defendant, though unsuccessful, may be awarded any extra costs caused by joining any person who is not found entitled to relief.

**Who may be joined as defendants**

2.—(1) All persons may be joined as defendants in one action against whom the right to any relief in respect of or arising out of the same transaction or event or series of transactions or events

is alleged to exist, whether jointly, severally or in the alternative, where if separate actions were brought any common question of law or fact would arise.

(2) A decree may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities without any amendment.

(3) Where two or more persons are made defendants, whether as jointly or as severally liable, the plaintiff may have a decree against any one or more of the defendants without prejudice to his right to proceed with the action against any other defendant.

(4) Where a plaintiff proceeds against one or more of several persons jointly liable, the defendant or defendants sued may avail himself or themselves of any set-off or other defence to which he or they would be entitled if all the persons liable were made defendants.

### **Defendant interested in part of claim**

3. It shall not be necessary that every defendant to an action shall be interested as to all the relief claimed, or as to every cause of action, but the judge may make any order that may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he has no interest.

### **Persons liable under one contract**

4. The plaintiff may at his option join as parties to the same action all or any one of the persons severally or jointly and severally liable on any one contract.

### **Where plaintiff in doubt whom to sue**

5. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants, so that the question which is liable, and to what extent, may be determined between the parties.

### **Misjoinder or non-joinder**

6.—(1) No action or matter shall be affected by reason of the misjoinder or non-joinder of parties, and the judge may in every action or matter deal as justice may require with the real question at issue between the parties actually before him.

(2) Where one or more than one of several persons jointly liable is sued and the other or others so liable and not sued reside out of the jurisdiction or are dead, the fact of the residence of the party or parties not sued being outside the jurisdiction, or the death of such parties, shall appear on the face of the process.

### **Representative proceedings**

7.—(1) Where there are numerous persons having the same interest in one action or matter, one or more of them may be authorised or appointed by the judge before or at the hearing, to sue or defend on behalf of all persons so interested.

(2) Where a defendant desires to defend on behalf of numerous persons having the same interest, he shall, within five days from the day on which the civil bill is served on him, file in the Office an affidavit stating the facts on which he relies and the names, addresses and occupations or, where appropriate, a collective description of the persons on behalf of whom he desires to defend, and serve on the plaintiff a copy of the affidavit together with a notice of the defendant's intention to apply to the judge at or before the hearing of the action or matter for leave so to defend.

(3) If an order is made for the defendant so to defend—

- (a) a collective description sufficient to designate the persons to whom the order relates shall be added to the name of the defendant in the books of the court;
- (b) notice shall be given to such persons affected by the order and in such manner, in Form 3 or Form 4 or otherwise, as the judge directs;
- (c) the hearing of the action or matter may be adjourned to enable any person who is included in the collective description to object to the defendant defending on behalf of all or any of the persons to whom the order relates;
- (d) where an objection is made under paragraph (c), the judge shall consider the objection and make such further order as he thinks fit.

### **Trustees and beneficiaries**

8.—(1) Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any person beneficially interested therein, and shall be considered as representing such person, but the judge may, at any stage of the proceedings, order any person to be made a party either in addition to or in lieu of the previously existing parties.

(2) This Rule shall apply to trustees, executors and administrators sued in proceedings to enforce a security by sale or otherwise.

### **Proceedings Against Estates Act (Northern Ireland) 1971**

9.—(1) Where any person against whom an action would have lain has died but the cause of action survives, the action may; if no grant of probate or administration has been made, be brought against the estate of the deceased.

(2) Without prejudice to the generality of paragraph (1), an action brought against “the personal representatives of AB deceased” shall be treated for the purposes of that paragraph as having been brought against his estate.

(3) An action purporting to have been commenced against a defendant who has died shall, if the cause of action survives and no grant of probate or administration has been made, be treated as having been brought against his estate in accordance with paragraph (1).

(4) In any such action as is referred to in paragraph (1) or (3)—

- (a) the plaintiff shall apply to the judge for an order appointing a person to represent the deceased's estate for the purpose of the proceedings or, if a grant of probate or administration has been made since the issue of the civil bill, for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person so appointed, or as the case may be against the personal representative, as if he had been substituted for the estate;
- (b) the judge at any stage of the proceedings and on such terms as he thinks just and either on his own motion or on application may make any such order as is mentioned in subparagraph (a) and allow such amendments (if any) to be made and make such other order as he thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

(5) Before making an order under paragraph (4) the judge may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as he thinks fit.

(6) Where no grant of probate or administration has been made, any decree granted in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings.

### **Actions relating to land**

- 10.** In actions brought under Article 12 of the Order, any person not named as a defendant—
- (a) may appear and defend, on sending by post to the chief clerk and to each plaintiff and defendant before the entry day a notice claiming that he has an estate or interest in the land to which the action relates or a part thereof;
  - (b) may, by leave of the judge, appear and defend at the hearing, and the judge may, if he thinks fit, add the name of such person as a defendant in the action;

and the judge may deal with such person; both as to costs and allowances, as if he had been originally named as a defendant and served with the civil bill.

## **PART II**

### **PERSONS UNDER DISABILITY**

#### **Minor**

**11.** Without prejudice to Article 39(2)(c) of the Order, a minor may sue by his next friend and may defend by his guardian ad litem.

#### **Persons of unsound mind**

**12.** A person of unsound mind if so found may sue and defend by his committee and if not so found may sue by his next friend and may defend by his guardian ad litem.

#### **Proceedings by next friend**

- 13.** Where—
- (a) a minor desires to commence proceedings (other than an action in his own name under Article 39(2)(c) of the Order) or is a claimant in interpleader proceedings; or
  - (b) proceedings are to be commenced, or a claim made in inter-pleader proceedings, on behalf of a person of sound mind not so found;

the proceedings or claim shall be in the name of the minor or person by his next friend.

#### **Where judge may appoint next friend**

**14.—(1)** Where proceedings in which a next friend is required are commenced without such next friend the judge may—

- (a) on the application of any party or of his own motion appoint as next friend any person who consents to act and gives an undertaking in Form 5; or
- (b) order the proceedings to be struck out.

(2) Where a next friend is appointed under paragraph (1), Order 4 Rule 2(2) shall apply.

#### **Appointment of guardian ad litem**

**15.—(1)** Where any defendant is a person for whom a guardian ad litem may properly be appointed, the following provisions shall apply—

- (a) at any time after the service of the civil bill and before the entry day, a guardian ad litem may be appointed by the chief clerk on application made to him on behalf of that defendant, on affidavit in Form 6 together with a written consent of the proposed guardian to act;

- (b) where the appointment is so made, the order shall be in Form 7 and the chief clerk shall send notice to the plaintiff in Form 8;
  - (c) where a guardian ad litem has not been appointed under sub-paragraph (a) or where the person appointed dies or otherwise becomes unable or unwilling to act, the judge may appoint a person to be guardian ad litem.
- (2) A guardian ad litem shall not be personally liable for any costs not occasioned by his own personal negligence or misconduct.

### PART III

#### ADMINISTRATION AND EXECUTION OF TRUSTS

##### **Representation of person or class**

16. Where any person or class of persons is beneficially interested in any proceedings for the administration of the estate of a deceased person or for the execution of the trusts or the construction of any instrument, the judge may, whether such person or class has been ascertained or not, appoint any person to represent such person or class, and any order made in the presence of the person so appointed shall be binding on the person or class so represented.

##### **When service unnecessary**

17. Any person beneficially interested in the residuary estate of a deceased person or any one of several cestuis que trustent under any instrument, being entitled to an order for the administration of the estate or for the execution of the trust, may have the same without serving notice of the proceedings on all the other persons so interested.

##### **Judge may order parties to be added**

18. The judge may require any person to be made a party to any proceedings, may give the conduct of the proceedings to such person as he thinks fit, and may make such order in any particular case as he thinks just for placing the defendant on the record on the same footing in regard to costs, as other parties having a common interest with him in the matter in question.

##### **When notice of order to be served**

- 19.—(1) Where in any proceedings for—
- (a) the administration of the estate of a deceased person; or
  - (b) the execution of the trusts of any instrument; or
  - (c) the sale of any property;

an order has been made, the judge may direct that any persons interested in the estate or under the trust or in the property shall be served with notice of the order.

(2) Any person so served shall be bound by the proceedings as if he had originally been made a party and shall be at liberty to attend the proceedings and may at the next sitting of the court after service, or by leave of the judge at any subsequent sitting, apply to the judge to discharge, vary or add to the order.

##### **Service of notice of an order**

20.—(1) Subject to paragraph (2) the notice of an order mentioned in Rule 19 shall be served and endorsed in like manner as a civil bill.



(2) Where it appears to the judge that service of the notice cannot be effected or ought to be dispensed with, he may wholly dispense with service or may order substituted service.

(3) Where the order is for accounts and inquiries and service of the notice on any person is dispensed with, such person shall, unless the judge otherwise orders, be bound by the order.

#### **Where no legal representative**

**21.** If, in any proceedings, it appears to the judge that any deceased person who was interested in the matter in question has no legal personal representative, the judge may—

- (a) proceed in the absence of any person representing the estate of the deceased person; or
- (b) may appoint some proper person to represent the estate for the purpose of the proceedings;

on such notice to such persons, if any, as the judge may think fit, either specifically or generally by public advertisement, and the order made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the proceedings.

#### **Only representative to appear on claim of any person not a party**

**22.—**(1) In any proceedings for the administration of the estate of a deceased person, no party other than the representative shall, except by leave of the judge, be entitled to appear either in court or in chambers on the claim of any person not a party to the proceedings against the estate of the deceased person in respect of any debt or liability.

(2) The judge may direct or give liberty to any other party to the proceedings to appear either in addition to or in place of the representative.

### **PART IV**

#### **CHANGE OF PARTIES**

#### **Proceedings on change of plaintiffs or defendant's title before decree**

**23.—**(1) Where, after the commencement of any action and before final decree, there is any assignment, creation, change, transmission or devolution of the interest, estate or title of any plaintiff, the judge may, upon the *ex parte* application of the person to or upon whom such interest, estate or title has come or devolved or of any party to the action, grounded upon an affidavit setting out the facts of such assignment, creation, change, transmission or devolution, make an order that such person be substituted for or made a joint plaintiff with the plaintiff named in the original civil bill and the judge may, before making such order, require such notice of the application to be served as he thinks fit.

(2) Where, after the commencement of any action, there is any assignment, creation, change, transmission or devolution of the interest, estate or title of any defendant, the judge may, on an *ex parte* application grounded upon an affidavit setting forth the facts of such assignment, creation, change, transmission or devolution, make an order that the person to or upon whom such interest, estate or title has come or devolved, be substituted for or made a joint defendant with the defendant named in the original civil bill, and the judge may, before making such order, require such notice of the application to be served as he thinks fit.

#### **Where person entitled to proceed on death of party fails to do so**

**24.** Where a plaintiff or defendant in an action or matter dies and the cause of action survives but the person entitled to proceed fails to proceed, the defendant (or the person against whom proceedings may be continued) may apply to the judge for an order directing the plaintiff (or person

entitled to proceed) to proceed within such time as may be ordered and in default the action or matter may be struck out, and in a case where it is the plaintiff who has died, execution may be had for any costs awarded to the defendant as if Order 40 Rule 2 applied.

#### **Alteration of records on change of parties**

**25.** Where a party is substituted or added the books of the court shall be altered and all subsequent proceedings shall be carried on accordingly.

## **ORDER 4**

### **Security for costs**

#### **Plaintiff not resident in Northern Ireland**

**1.—(1)** Where it appears that the plaintiff does not reside in Northern Ireland, the chief clerk may, on the application of a defendant, order security for costs to be given to the satisfaction of the chief clerk and before making such an order the chief clerk shall consider all the circumstances of the case including any right of the defendant to proceed under the Inferior Courts Judgments Extension Act 1882(4) to recover any costs awarded to him.

(2) A person ordinarily resident out of Northern Ireland may be ordered to give security though he may be temporarily resident in Northern Ireland.

(3) Any party to the action or other proceeding may, on giving at least two days' notice to the other party, appeal to the judge against any decision or order of the chief clerk under this Rule.

(4) Where an order is made under paragraph (1) the action or other proceeding shall not, without leave of the judge, proceed to hearing until the order has been complied with.

#### **Next friend**

**2.—(1)** A person acting as next friend in any proceedings shall—

- (a) before the proceedings are commenced; or
- (b) in the case of interpleader proceedings to which Order 10 applies before the issue of the summons;

deliver at the Office an undertaking in Form 5, witnessed by a solicitor or person by whom affidavits may be taken.

(2) On giving the undertaking, the next friend shall be liable for costs in the same manner and to the same extent as if he were himself a plaintiff, and, if the proceedings fail or are discontinued, an order for payment of costs may be made against the next friend whether an order for costs is or is not made against the person under disability, and proceedings may be taken on the order for the recovery of the costs as for the recovery of any amount payable under a decree.

(3) This Rule does not apply to proceedings under Order 44.

#### **Where proceedings are remitted from High Court**

**3.** Where any proceedings in which a person is suing by a next friend are remitted to a county court, the plaintiff shall lodge with the chief clerk the Written authority for the use of the name of the next friend filed in the High Court, or a duplicate or copy thereof, which shall be deemed to be an undertaking within Rule 2.

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(4) 1882 c. 31

## ORDER 5

### Commencement of proceedings

#### Commencement by civil bill

1.—(1) Except as otherwise provided by any enactment or these Rules, proceedings in a county court shall be commenced by a civil bill in such one of the Forms 9 to 32 as may be appropriate.

(2) Every civil bill shall be signed by the plaintiff or by his solicitor or a partner or duly authorised employee of his solicitor.

(3) A civil bill commencing proceedings in a title action or for ejection on the title shall be headed with the words “Title Jurisdiction”.

(4) A civil bill commencing proceedings within the equity jurisdiction of the court (in these Rules referred to as an “equity civil bill”) shall be headed with the words “Equity Civil Bill”.

(5) An ordinary or ejection civil bill shall bear an endorsement in Form 10 or Form 13, as may be appropriate.

#### Particulars of claim

2.—(1) The plaintiff shall set out in his civil bill particulars of his claim.

(2) In an action for the recovery of or in relation to land, the plaintiff shall give a full description of the land and in such an action or in an action for the recovery of rent or mesne profits the plaintiff shall set out in his civil bill the facts on which he relies as giving the court jurisdiction.

(3) A plaintiff suing as the assignee of a debt or other legal thing in action shall set out in his civil bill the name and description of the assignor and the date of the assignment.

(4) A plaintiff suing for the recovery of a book or shop debt or other running account shall, unless such particulars are adequately set out in the civil bill, furnish full particulars of his demand within a reasonable time before, or at the time of, the service of the civil bill; but the judge may dispense with this requirement if in any case he is satisfied that it is unnecessary.

(5) A plaintiff alleging a breach of statutory duty shall set out in his civil bill particulars of the enactment on which he relies.

(6) Where a plaintiff desires to abandon, under Article 10(1) of the Order, the excess of his claim over £2,000, the abandonment of the excess shall be entered at the end of the particulars.

(7) An equity civil bill shall set out as concisely as may be the facts constituting the plaintiff's claim and the facts upon which the plaintiff relies as giving the court jurisdiction.

(8) Where reference to a sum of money is made in a civil bill or in the particulars the sum must be stated in decimal currency.

#### Notice for further particulars

3.—(1) In any case to which Rule 2(4) does not apply, any party may, subject to paragraph (3), require any other party, by notice in writing served before the beginning of a period of fourteen days ending on the entry day, to furnish further particulars before the beginning of a period of seven days ending on the entry day.

(2) Where under paragraph (1) particulars have been duly required and—

- (a) have not been furnished within the time specified in the notice; or
- (b) if furnished, are in the opinion of the judge insufficient;

the judge may adjourn the case and order sufficient particulars to be furnished; and any costs occasioned by any such default or insufficiency shall be in the discretion of the judge.

(3) Unless the consent of the chief clerk is obtained for the service of a notice under paragraph (1), any additional costs incurred thereby shall be in the discretion of the judge.

### **Proceedings against the Crown**

4.—(1) Where civil proceedings are brought against the Crown in accordance with the provisions of the Crown Proceedings Act the Crown may, within three days from the service of the civil bill, serve a notice upon the plaintiff or his solicitor, requiring such information as may be reasonably necessary to show the circumstances in which the alleged liability of the Crown has arisen, and as to any department and officer of the Crown concerned.

(2) The plaintiff or his solicitor shall, within three days from the service of such notice, serve upon the Crown an answer to the notice containing the required particulars, and the plaintiff shall be bound by the statements contained therein unless at the hearing the judge otherwise directs.

(3) If the plaintiff fails to comply with the requirements of such notice as aforesaid, the judge shall, subject to paragraph (4), adjourn the hearing and direct the plaintiff to furnish the required particulars within such time as shall be specified by the judge. The costs of such adjournment shall be in the discretion of the judge.

(4) If it appears to the judge, on the application of the plaintiff, that the furnishing by the plaintiff of the particulars required by the Crown is not reasonably practicable or is likely to prejudice the plaintiff's case, the judge shall not direct such particulars to be furnished; and in any such case an answer by the plaintiff which omits such particulars shall be deemed to be a sufficient compliance with the notice; and if such an answer has already been served the judge may proceed to hear and determine the civil bill without an adjournment.

### **Commencement by petition**

5.—(1) Subject to Order 28, proceedings under paragraphs (i), (k) and (l) of Article 14 of the Order shall be commenced by a petition in such one of Forms 33 to 36 as may be appropriate.

(2) The petition and two copies thereof shall be delivered to the chief clerk at his office and he shall issue same by endorsing on the petition and on a copy a notice in Form 37 and shall file the petition and return such endorsed copy for service.

(3) The person delivering the petition shall cause such endorsed copy to be served in accordance with Order 6 on the person necessary to be served therewith.

## **ORDER 6**

### **Service**

#### **Issue of civil bill**

1. A civil bill shall be deemed to have been issued—
  - (a) so soon as it has been received by a process server (or other person authorised by this Order) for service on any defendant; or
  - (b) so soon as service of it has been accepted by a solicitor under Rule 3(4); or
  - (c) without prejudice to paragraphs (a) and (b), so soon as an order for service of a civil bill has been made under Rule 6(2) or so soon as service declared sufficient under Rule 7 has

- been effected or so soon as service of a civil bill to which Rule 11 applies has been effected in accordance with that Rule; or
- (d) where service is by post, as soon as it has been posted; or
  - (e) in an action such as is referred to in Rule 9(2) of Order 3 (where a civil bill is issued against “the personal representatives of AB deceased”) when a copy thereof is filed in the Office.

### **Process servers and their duties**

**2.—**(1) The name and address of every person appointed as a process server or removed from or otherwise ceasing to hold the office of process server shall be published in such manner and at such times as the judge thinks expedient.

(2) Every process server who holds office at the date of coming into operation of these Rules shall at the first sittings after such date of the court for the division in which he acts as process server, and every process server appointed after the coming into operation of these Rules shall on appointment, take the oath set out in Form 38.

(3) Subject to the provisions of this Order, a process server shall serve all civil bills and other documents received by him for service.

(4) Every process server shall keep, in such form as may be approved by the judge, a book in which he shall enter the following particulars in relation to every civil bill or document received by him for service, that is to say—

- (a) the names of the plaintiff and defendant;
  - (b) the cause of action;
  - (c) the date on which he received the civil bill or document for service;
  - (d) the date on which he served the civil bill or document;
  - (e) the place where and the name or description of the person on or with whom the civil bill or document was served or left; or if the civil bill or document has not been served on or left with any person, the reason why service has not been effected.
- (5) A process server shall not accept for service—
- (a) any copy of a civil bill unless it is accompanied by the original civil bill;
  - (b) any civil bill not duly stamped.

(6) Every process server shall compare with the original every copy of each civil bill received by him for service, and before serving such copy shall endorse his name thereon; and after effecting service shall endorse on the original civil bill a statement of the day of the week and date upon which, the manner in which, and the place where such service was effected, and as to the person (whether the defendant, the husband or wife of the defendant or a relative or employee of his) on whom the civil bill was served, and shall sign such statement.

(7) On or before the day following the last day for service, each process server shall return every original civil bill to the solicitor or other person from whom he received it.

(8) As soon as possible after service of a summary civil bill, the process server shall return the original, duly endorsed as to service, to the plaintiffs solicitor.

(9) It shall be the duty of every process server to attend the sittings of the court for the division or part thereof for which he has been appointed and produce his book or books, or in his unavoidable absence to cause such book or books to be so produced.

(10) In the event of the unavoidable absence or of the illness or death of a process server, his book or books shall be so produced and verified by some person who can swear to the handwriting of the process server, and on being so verified shall be *prima facie* evidence of the matters entered therein.

(11) Where personal service has been effected but the process server does not know of his own knowledge that the person served is the defendant, satisfactory proof of the identity of the person served must be given.

(12) Process servers shall lodge their books in the Office when and so often as the judge may direct; and books so lodged shall be kept as part of the records of the court.

(13) The oath to be taken by a process server at each sitting of the court shall be in Form 39.

### **Service of civil bills**

3.—(1) A civil bill shall not be served otherwise than in accordance with this Order.

(2) Except where otherwise directed under this Rule or Rules 6, 7, 9 and 11, a civil bill may be served either—

- (a) by a process server appointed for the division of the court in which proceedings are brought or that specified by paragraph (3), or
- (b) where service is not required by paragraph (6) or Rule 5 of Order 39 or Rule 6(1) of Order 40 to be made on the defendant in person, by a solicitor or member of his staff over the age of 16 years, sending, by registered post or by first class post using the recorded delivery service, a copy of the civil bill and any other document required to be attached thereto in an envelope addressed to the person to be served as stated in the civil bill.

(3) Subject to paragraph (4) and to Rules 6, 7 and 11, where a person to be served with a civil bill resides outside the division of the court in which the proceedings are to be brought, the civil bill shall, unless served under paragraph (2)(b), be served by a process server for the division within which the person to be served resides and proof of such service shall be by affidavit to be filed not later than entry day in the office of the chief clerk for the division in which the proceedings are to be brought.

(4) Where a solicitor represents that he is authorised to accept service of a civil bill on behalf of any defendant (not being a default or summary civil bill issued under Order 12 or a civil bill under Article 107 of the Judgments Enforcement (Northern Ireland) Order 1981<sup>(5)</sup>), the delivery by any person of a copy of the civil bill to that solicitor shall be good service if that solicitor endorses and signs on the original a memorandum stating that he is so authorised as aforesaid and that he accepts service accordingly.

(5) Except where otherwise directed or permitted under this Order, service of a civil bill shall be effected—

- (a) by delivering a copy of the civil bill to the defendant personally; or
- (b) by leaving a copy of the civil bill at the defendant's residence or place of business with the wife or husband of the defendant, or with some relative of the defendant or of the husband or wife of the defendant, or with an employee of the defendant, the relative or employee being apparently over the age of sixteen years.

References in this paragraph to a defendant include references to a person who under the provisions of this Order is to be served with a civil bill.

(6) A civil bill issued under Article 107 of the Judgments Enforcement (Northern Ireland) Order 1981 shall be served personally on the defendant named therein.

(7) Nothing in paragraphs (5) and (6) shall affect the method of serving documents on a company provided by section 385 of the Companies Act (Northern Ireland) 1960<sup>(6)</sup>.

(8) in the absence of any statutory provision regulating service of process, service of a civil bill on a corporation aggregate may be made on the mayor or other head officer, or on the clerk, treasurer or secretary.

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(5) S.I. 1981/226 (N.I. 6)

(6) 1960 c. 22 (N.I.)

(9) Where a defendant keeps his residence or place of business closed, or temporarily abandons either, so as to prevent the ordinary service of a civil bill, it shall be sufficient service to post a copy of the civil bill on the door or other conspicuous part of such residence or place of business.

(10) Where a civil bill is issued in an action such as is referred to in Rule 9(2) or (3) of Order 3 and cannot be served because no grant of probate or administration has been made, a copy (if the civil bill shall be filed by delivery to the Office as soon as it appears that the defendant is dead and that it cannot be served otherwise for the purpose of commencing the action.

### **Actions for recovery of land**

4.—(1) In any action for the recovery of land—

- (a) for overholding, the civil bill shall be served—
  - (i) on the tenant; and
  - (ii) on any person in actual possession of the land;
- (b) for non-payment of rent, the civil bill shall be served on any person in actual possession of the land as tenant or under-tenant;
- (c) on the title, the civil bill shall be served—
  - (i) on any person in actual possession of the land; and
  - (ii) on any person who is in receipt of the rents or profits of the land or any part thereof; and
  - (iii) on such other persons as the judge may direct;so, however, that in relation to an application for possession made in accordance with Rule 10 of Order 40 the civil bill shall be served on the judgment debtor instead of on such persons as are referred to in sub-paragraph (ii) above;
- (d) where at least six months' rent of the land remains unpaid and the tenant has deserted or otherwise abandoned the land leaving the premises thereon unoccupied or the land not farmed in accordance with the rules of good husbandry, the civil bill shall be served—
  - (i) on the tenant; and
  - (ii) on any person in actual possession of the land;
- (e) where any person has been put into possession or occupation of the land by permission, or as a servant or caretaker, or as a tenant strictly at will or on sufferance, the civil bill shall be served on—
  - (i) the person who has been so put into possession or occupation; or
  - (ii) any persons being or claiming to be in possession or occupation through or under such person.

(2) Where in any action to which any of the sub-paragraphs (b) to (e) of paragraph (1) applies there is no person in actual possession of the land to which the action relates, a copy of the civil bill shall be affixed on some conspicuous part of the land.

### **Persons under disability**

5.—(1) Where a defendant or party to any proceeding is a minor, the civil bill shall be served on his father or guardian or, if he has no father or guardian, then on the person with whom he resides; but the judge may order that service effected or to be effected on the minor shall be deemed good service.

(2) Where a defendant or party to any proceeding is a person of unsound mind (whether or not so found) the civil bill shall be served on his committee or, if he has no committee, on the person with whom he resides or under whose care he is.

### **Resistance to service; substituted service**

6.—(1) Where the judge is satisfied, on an application made by the plaintiff either in court or chambers, that the process server has been prevented by forcible resistance, or by reasonable apprehension of personal injury, from serving the civil bill upon anyone in person, the judge may order that a copy of the civil bill be sent by registered post to the person to be served and that a copy be posted on such courthouse as the judge may direct, together with a notice stating that such copy is respectively sent and posted by order of the judge, and that such sending and posting is good service.

(2) Where the judge is satisfied, on an application made by the plaintiff either in court or chambers, that for any reason due service of the civil bill cannot be effected promptly, the judge may make such order for substituted service, or for notice by advertisement in substitution for service, or otherwise as he thinks just.

(3) An order under paragraph (1) or paragraph (2) shall state the day on which the action will be heard, and a copy of the order shall (except where the service is to be by advertisement) be posted or served along with the civil bill.

(4) An application for an order under this Rule may be grounded on an affidavit stating the facts on which the applicant relies.

### **Service deemed good**

7. The judge may in any case declare the service actually effected sufficient.

### **Time for service**

8. Every civil bill other than a summary civil bill shall be served before the beginning of a period of twenty-eight days ending on the entry day.

A process server shall, as soon as possible after he has received a summary civil bill, serve it upon the defendant.

### **Service in special circumstances**

9.—(1) Where the judge or chief clerk on the application of a solicitor is satisfied of the existence or imminence of such special circumstances as would render impracticable the service of any civil bill in accordance with the foregoing Rules of this Order, he may direct or authorise such service—

- (a) to be effected by means of the recorded delivery service; or
- (b) to be effected in such other manner and by such person and to be proved in such manner as he may direct.

(2) Where it would be impracticable to make such an application as is provided for in paragraph (1) the solicitor for the plaintiff or a partner or apprentice of his may himself serve the civil bill as if he were a duly appointed process server. A solicitor who serves a civil bill or causes a civil bill to be served as aforesaid shall forthwith make and shall file in the Office not later than entry day an affidavit setting forth all relevant facts; and it shall be in the discretion of the judge to direct that such service be deemed good service.

### **Application of this Order**

10.—(1) Except where otherwise provided by any enactment and subject to paragraph (2), the foregoing Rules of this Order shall apply *mutatis mutandis* to the service of petitions, summonses, notices or any other documents required or authorised to be served for the purposes of initiating any proceedings in a county court.



(2) Rule 2(5)(a), (6) and (7) shall not apply to the service of a petition and such service shall be proved by affidavit of the process server or, where service was by post, by production of the solicitor's certificate of posting.

### **Proceedings under the Crown Proceedings Act**

**11.**—(1) The provisions of this Order relating to personal service shall not apply to any civil bill or other document required to be served on the Crown Service of any such civil bill or document shall be in accordance with section 18 of the Crown Proceedings Act and may be effected either—

- (a) by leaving the civil bill or document at the office of the person to be served; or
- (b) by sending it by registered post addressed to the person to be served.

(2) A civil bill at the suit of the Crown may by leave of the judge be served out of Northern Ireland in any case in which leave might be granted by the High Court for the service of a writ of summons out of the jurisdiction. Where such leave has been given in any proceedings in a county court, the like leave may be given in respect of documents to be subsequently served in those proceedings.

(3) Where leave is sought to serve a civil bill at the suit of the Crown anywhere in Great Britain, if it appears to the judge that there may be a concurrent remedy in England or Scotland (as the case may be), the judge shall have regard to the comparative cost and convenience of proceedings within the jurisdiction of the court, or in the place of residence of the intended defendant, and particularly to the powers and jurisdiction of the county courts in England, and of the sheriff courts or small debt courts in Scotland, respectively.

(4) An application for leave to serve a civil bill at the suit of the Crown on a person outside the United Kingdom shall be supported by affidavit or other evidence—

- (a) stating that, in the belief of the deponent, the applicant has a good cause of action; and
- (b) showing—
  - (i) in what country and place the person to be served is, or may probably be found;
  - (ii) whether such person is a British subject or not; and
  - (iii) the grounds on which the application is made;

and where the judge gives leave for the service of such a civil bill or other document outside the United Kingdom, he shall fix the return day, and in so doing shall have regard to the distance of the country wherein service is to be effected.

(5) Where leave is given under the preceding paragraphs of this Rule for service out of the jurisdiction, such service shall, subject to this paragraph, be effected either—

- (a) by posting the document to be served together with a copy of the relevant order in a prepaid registered envelope addressed to the person to be served; or
- (b) by transmitting such document to an agent of the plaintiff for personal service by such agent;

but where the person to be served is outside Her Majesty's dominions there shall be served on him a copy of the relevant order and a notice of commencement of proceedings to which there shall be annexed a copy of the document for the service of which leave has been given.

### **Proof of service by post**

**12.**—(1) Where service of a civil bill or other document has been made by post under these Rules, the person posting the copy civil bill or document shall endorse on the original his name, the date on which it was posted and the serial number on the envelope and on the post office certificate of posting.

(2) Evidence of such service shall be given by the production of a certificate of the solicitor personally in charge of the proceedings on behalf of his client and such certificate shall be in Form 40; and—

- (i) refer to the original civil bill or document and any other document attached thereto and the serial number on the post office receipt for posting and on the envelope containing, the copy thereof;
- (ii) state the contents of the envelope and by whom it was posted;
- (iii) exhibit the post office receipt for posting;
- (iv) state that, to the best of the knowledge and belief of the solicitor, the address on the envelope was that of the last known place of abode of the person to be served;
- (v) state affirmatively that the envelope has not been returned by the post office as undelivered;
- (vi) exhibit the relevant post office advice of delivery.

(3) Every document proved to have been posted and delivered as aforesaid shall, unless the contrary is shown, be deemed to have been served on the person to whom the envelope containing it was addressed at the time stated in the advice of delivery.

## ORDER 7

### Special defences

#### **Statement of defence**

1. A defendant in an equity suit may, before the beginning of a period of four days ending on the entry day, serve on the plaintiff a statement in Form 41 disclaiming any interest in the subject matter of the proceedings or admitting or denying any of the statements in the plaintiff's civil bill, or raising any question of law on such statements, without admitting the truth thereof, or he may specify any new fact or document on which he intends to rely as a defence or which he intends to bring to the notice of the court.

#### **Admission in action for recovery of land**

2. In an action for the recovery of land a defendant who admits the title of the plaintiff to the land or any part thereof and his right to the immediate possession thereof may, before the beginning of a period of four days ending on the entry day, deliver to the plaintiff an admission thereof.

#### **Defence in action of trespass, etc.**

3. Where a defendant in any action of trespass or in any action in which the title to any land comes in question (not being an action for the recovery of the land) intends to rely on a justification of the acts complained of, as having been done in exercise of any alleged right, he may serve a notice to that effect, setting out such alleged right, on the plaintiff before the beginning of a period of four days ending on the entry day.

#### **Tender and payment into court**

4.—(1) Where the defence is tender, such defence shall not be available unless before or at the hearing the defendant lodges with the chief clerk the amount alleged to have been tendered, together with the costs of the action up to the time of tender if it was made after action brought.

(2) Where in an equity suit a defendant, intends to rely upon payment made by him into court, he shall give notice thereof to the plaintiff before the beginning of a period of four days ending on the entry day.

### **Set-off and counterclaim**

5.—(1) Where a defendant in any proceedings not being an action for rent intends to rely upon any set-off or counterclaim he shall give notice thereof in writing to the plaintiff and to the chief clerk on or before entry day.

(2) Where in any action for rent a defendant intends to rely on a deduction or set-off in respect of debts due by the landlord to the tenant under section 48 of the Landlord and Tenant Law Amendment Act, Ireland, 1860(7) the defendant shall give notice in writing of such intention stating particulars of such deduction or set-off to the plaintiff before the beginning of a period of four days ending on the entry day and, where the defendant intends to rely on the provisions of section 40 of that Act, he shall lodge with the chief clerk the money tendered by him as thereby directed and give notice of such lodgment to the plaintiff before the beginning of a period of four days ending on the entry day.

### **Counterclaim against person other than plaintiff**

6. Where a defendant desires to set up a counterclaim against a plaintiff and some other person, he may apply to the judge for an order that the other person be added as a defendant to the counterclaim and the judge may make an order accordingly and may give such directions as may be necessary to enable the questions at issue between the parties to be determined at the hearing of the action.

### **Set-off and counterclaim in proceedings by and against the Crown**

7.—(1) In proceedings by the Crown for the recovery of any taxes, duties or penalties, a defendant shall not be entitled to avail himself of any set-off or counterclaim.

(2) In any proceedings by the Crown other than those referred to in paragraph (1), a defendant shall not be entitled to avail himself of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

(3) A defendant shall not be entitled, without the leave of the judge (to be obtained on application of which notice has been given to the Crown before the beginning of a period of four days ending on the date of the application) to avail himself of any set-off or counterclaim if—

- (a) the subject matter of the set-off or counterclaim does not relate to the government department in whose name the proceedings are brought; or
- (b) the proceedings are brought in the name of the Attorney-General.

(4) In proceedings against the Crown, the Crown shall not be entitled, without the leave of the judge (to be obtained on application of which notice has been given to the plaintiff before the beginning of a period of four days ending on the date of the application), to avail itself of any set-off or counterclaim if—

- (a) the Crown is sued in the name of a government department and the subject matter of the set-off or counterclaim does not relate to that department; or
- (b) the Crown is sued in the name of the Attorney-General.

## **Costs**

8. The judge, in the exercise of his discretion as to costs, may take into consideration the extent to which a defendant has or has not availed himself of such of the powers given by the preceding Rules of this Order as were available to him.

## **ORDER 8**

### **Entry and lodgment of civil bills and applications for dismissal**

#### **Entry day**

1.—(1) In each division, for each ordinary sitting of the court in that division, civil bills shall be entered or lodged in accordance with the following Rules on or before a day (hereinafter referred to as the “entry day”) which shall be 14 days before the opening day of that sitting of the court.

(2) When such day is a public holiday the entry day shall be the previous day on which the Office is open.

#### **Entry of ordinary civil bills**

2. All civil bills, other than equity or summary civil bills, intended for entry or to be proceeded on at the sitting to which the same are returnable and such summary civil bills as under Rule 13 of Order 12 require to be entered shall, on or before the entry day, be delivered by the party or his solicitor entering them to the chief clerk together with a list in Form 42 arranged in alphabetical order according to the surname of the plaintiff, or of the first plaintiff in any proceeding if there is more than one.

#### **Lodgment of equity civil bills**

3. The plaintiff in every equity suit shall, on or before the entry day, lodge with the chief clerk for entry the equity civil bill and a copy thereof and a copy of any notice or other document served on him by the defendant or by him on the defendant.

#### **Lists of defended cases; copies of civil bills for judge**

4.—(1) The several solicitors shall, on or before the entry day, deliver to the chief clerk a list in Form 42 arranged in like alphabetical order as aforesaid of all cases in which they have been employed by defendants to take defence or to counterclaim or to appear for third parties and such solicitors shall be deemed to be the solicitors on record for such parties.

(2) In every defended case a copy of the civil bill and, where there is a court claim, a copy of the counterclaim, shall be made available at the hearing for the use of the judge.

#### **Entry or lodgment after entry day**

5. No civil bill or defence shall be entered for hearing or received after entry day without the special order of the judge on Such terms, including the payment of a special entry fee, as the judge thinks fit.

#### **Applications for dismisses**

6.—(1) If the plaintiff in any action ordered by the High Court to be heard or remitted by the High Court for hearing in any county court under the provisions of any enactment, omits or refuses to lodge the requisite documents, the defendant may, at any time during the sittings named in the order

or the next succeeding sittings, lodge with the chief clerk a certified copy of the notice of remittal served on him by the proper officer of the Supreme Court in accordance with Rule 8(b) of Order 78 of the Rules of the Supreme Court (Northern Ireland) 1980<sup>(8)</sup> and the copy of the writ of summons or other originating process served on the defendant verified by affidavit, for the purpose of having the action dismissed by the judge.

(2) If a plaintiff in any action causes a civil bill to be served on a defendant and does not enter the civil bill for hearing at the sittings named in the civil bill, the defendant may at any time during those or the next succeeding sittings make application for liberty to enter the civil bill for the purpose of having it dismissed.

(3) Where a defendant lodges the documents mentioned in paragraph (1) in accordance with that paragraph or an application under paragraph (2) is granted, the judge shall have the like power, jurisdiction and authority to dismiss the case and to award costs to the defendant as if the plaintiff had lodged the order for hearing and other requisite documents or, as the case may be, entered the civil bill for hearing and had failed to proceed thereon at the sittings named therein.

(4) In relation to an action to which Order 22 Rule 8(6) applies, paragraphs (1) and (3) shall have effect as if the reference—

- (a) to the plaintiff or defendant were, as the case may be, to the defendant or plaintiff; and
- (b) to a copy of the writ of summons or other originating process were to the original thereof together with particulars of the counterclaim.

#### **Entry on record of solicitor for plaintiff and defendant**

7. The chief clerk shall enter on record in his book the name of only one person or firm as solicitor for the plaintiff or for any defendant and in the case of a firm of solicitors not more than one member of such firm shall appear or take part in the conduct of any one case without the leave of the judge.

#### **Prepayment of certain court fees**

8. Where any court fees are payable on entry of any proceedings, a duly stamped requisition in Form 43 shall be lodged at the same time.

#### **Return of civil bills lodged on entry**

9. After entry, the original civil bills in equity and probate suits shall be retained on the court file and in all other cases shall, as soon as practicable, be returned to the persons lodging them.

## **ORDER 9**

### **Amendment**

#### **Generally**

- 1.—(1) Subject to paragraph (2), the judge may at any time—
- (a) amend any defects or errors in any proceedings whether the defect or error is that of the party applying to amend or not; and
  - (b) add, strike out or substitute any person either as plaintiff or defendant;

and all such amendments as may be necessary for the purpose of determining the real question in controversy between the parties shall be made, if duly applied for, and the proceedings shall continue

in all respects as if they had been commenced in the form in which they appear after the amendment has been made.

(2) A person shall not be added as a plaintiff without his consent in writing, or in the case of a person under disability, without the consent in writing of the next friend or committee or other person acting on behalf of the person under disability.

#### **Service on added defendant**

2. Where any person is ordered to be added or substituted as defendant, except under Rule 8, the amended civil bill or other originating process shall be served on the added or substituted defendant according to the rules applicable to the service of a civil bill, and the proceedings as against him shall be deemed to have begun only on the issue of the amended civil bill.

#### **When amendment may be made**

3. Any amendment may be made at any stage of the proceedings by the judge of his own motion or at the hearing or on notice before the hearing on the application of any party.

#### **Abandonment of part of claim**

4. A plaintiff may, at any time before an action is called on for hearing or in opening his case, abandon any part of his claim.

#### **Enlargement of claim**

5.—(1) Where, upon the taking of an account or on the evidence given at the hearing, it appears that a plaintiff is entitled to recover an amount larger than that claimed in his civil bill but not beyond the limit of the court's jurisdiction, the judge may, on payment by the plaintiff of the difference between the court fees paid and those payable on the larger amount, give a decree for the larger amount.

(2) A decree given under this Rule shall show the amount by which the claim has been enlarged.

#### **Amount beyond limit of court's jurisdiction found due on account**

6. Where, upon the taking of an account, it appears that a plaintiff is entitled to an amount beyond the limit of the jurisdiction of the court and he has not abandoned the excess, he may abandon it and a decree may be given for so much of that amount as lies within the jurisdiction of the court.

#### **Joinder of defendant under Civil Aviation Act 1949**

7.—(1) Notice of an application by a defendant to join any other person as a defendant pursuant to sections 40 and 49(2) of the Civil Aviation Act 1949(9) shall be served within five days of the service of the civil bill on the defendant.

(2) The judge may, as a condition of making the order, require the applicant to give an undertaking signed by him to indemnify the plaintiff against—

- (a) the costs of and occasioned by the joinder of the other person; and
- (b) any costs which the plaintiff may be ordered to pay to that person.

### **Change of defendant**

8. Where a person other than the defendant appears at the hearing and admits that he is the person whom the plaintiff intended to sue, or ought to have sued, he may, if the plaintiff consents, be substituted for the defendant and the proceedings shall continue as if he had originally been made defendant.

### **Clerical mistakes and slips**

9. Clerical mistakes in decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the judge or, with the consent of the parties, by the chief clerk.

## **ORDER 10**

### **Interpleader proceedings**

#### **Application for relief**

1.—(1) Where a person (in this Order called “the applicant”) is under a liability for any debt or other thing in action, money or goods for or in respect of which he is or expects to be sued by two or more persons (in this Part called “the claimants”) making adverse claim thereto, he may apply to the court for relief by way of interpleader.

(2) The application shall be made to the court in which the applicant is sued or, if he has not been sued, to the court in which he might be sued.

(3) The applicant shall serve on each of the claimants a summons in Form 44 or Form 45 as appropriate together with an affidavit showing that—

- (a) he claims no interest in the subject-matter in dispute other than for charges or costs; and
- (b) he does not collude with any of the claimants; and
- (c) he is willing to transfer the subject-matter into court or dispose of it as the court may direct; and
- (d) except where the applicant is a defendant, the subject-matter does not exceed in value the amount for which the court has jurisdiction;

but, where a claimant has commenced proceedings against the applicant in respect of his claim, a notice in Form 46 in lieu of a summons as aforesaid shall be served on that claimant.

(4) Subject to paragraph (5) the summons shall be served, entered, heard and determined as if it were an ordinary civil bill.

(5) Where the applicant is a defendant the affidavit and summons or notice shall be served within seven days from the date of the service of the civil bill on him.

(6) A claimant may within six days from the day on which the summons and affidavit are served on him, send a notice to the applicant that he has no claim to the subject-matter in dispute.

#### **Claimants having adverse titles**

2. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin but are adverse to and independent of each other.

#### **Hearing**

3.—(1) On the hearing of the proceedings—

- (a) where the applicant is a defendant—
  - (i) if the plaintiff does not appear, the action including the interpleader proceedings shall be struck out; or
  - (ii) if the claimant does not appear, the judge shall hear and determine the action as between the plaintiff and the defendant and may make an order barring the claim of the claimant; or
  - (iii) if both the plaintiff and the claimant appear, the judge shall, whether the defendant appears or not, hear the proceedings and give judgment finally determining the rights and claims of all parties; or
- (b) where the applicant is not a defendant—
  - (i) if any claimant does not appear, the judge shall make an order finally determining the claim as between the applicant and any claimant who appears and may make an order barring the claim of the absent claimant; or
  - (ii) if all the claimants appear, the judge shall, whether the applicant appears or not, hear the proceedings and make an order finally determining the rights and claims of all parties.

(2) An order in Form 47 or Form 48 barring the claim of a claimant shall declare the claimant and all persons claiming under him to be for ever barred as against the defendant or applicant and all persons claiming under him, and also (where the claimant has sent a notice to the applicant that he makes no claim) as against the plaintiff or the other claimant and all persons claiming under him.

(3) Where the claimant has not sent a notice to the applicant that he has no claim, an order barring the claim shall not affect the rights of that claimant and the plaintiff or another claimant as between themselves.

## ORDER 11

### Third party procedure

#### Generally

1.—(1) where a defendant claims to be entitled to any contribution, indemnity or other relief over against any person not a party to the action (in this Order referred to as a “third party”) he may, before the beginning of a period of seven days ending on the entry day, serve on the third party in like manner as a civil bill a third party notice in Form 49, together with a copy of the civil bill in the action.

(2) A third party notice may be served at any place in Northern Ireland and shall be entered in the same manner as a civil bill.

(3) When the third party notice has been served, a copy thereof shall forthwith be delivered to the plaintiff by post or otherwise and a copy thereof lodged with the chief clerk.

#### Effect of service of notice

2. Subject to any order of the judge, the notice shall have effect as if it were a civil bill served by the defendant on the third party.

#### Hearing

3. The judge at the hearing—



- (a) may give such directions or make such orders as he thinks appropriate for determining the issue between the parties; and
- (b) may pronounce such decree as the nature of the case may require and may make such order as to the costs of the third party proceedings as he considers just.

### **Application**

- 4. The foregoing Rules shall apply *mutatis mutandis* where—
  - (a) a defendant claims to be entitled to any contribution, indemnity or other relief over against any other defendant; but a third party notice served on a defendant need not be accompanied by a copy of the civil bill;
  - (b) a third party claims to be entitled to any contribution, indemnity or other relief over against another person not a party to the action (who may be known as a “fourth party”); and
  - (c) a fourth party or any subsequent party in like case makes a like claim against a person not a party to the action.
- 5. In this Order the words “plaintiff” and “defendant” respectively shall include a plaintiff and a defendant to a counterclaim.

## **ORDER 12**

### **Default and Summary Actions**

#### **PART I**

#### **GENERAL**

### **Proceedings which may be commenced and dealt with as default or summary actions**

- 1.—(1) Proceedings for a debt or liquidated amount, not being proceedings—
  - (a) against the Crown;
  - (b) against an infant or person of unsound mind;may be commenced and dealt with as a default action in accordance with Part II or; subject to paragraph (2), as a summary action in accordance with Part III.
- (2) Proceedings shall not be commenced or dealt with as a summary action—
  - (a) where the plaintiff is suing in person; or
  - (b) where the claim is on foot of a hire purchase or credit sale agreement.
- (3) Paragraph (2)(a) shall not, subject to any direction of the court in relation to any particular proceedings, apply to a solicitor or firm of solicitors suing for costs.

#### **PART II**

#### **DEFAULT ACTIONS**

### **Default civil bill**

- 2. A default action shall be commenced by a default civil bill in Form 50.

### **Notices to be annexed to default civil bills**

3. There shall be annexed to the copy of a default civil bill served on the defendant a notice in Form 51 addressed to the plaintiffs solicitor or, where the plaintiff is suing in person, to the plaintiff and a notice in Form 52 addressed to the appropriate chief clerk.

### **Entry of default civil bill as a default action**

4. If, on the expiration of fourteen days from the service of the copy of the default civil bill and notices, neither the plaintiffs solicitor nor the plaintiff nor the chief clerk has received notice from the defendant that he disputes his liability for the claim in whole or in part or alleges a counterclaim, the plaintiffs solicitor or, where the plaintiff is suing in person, the plaintiff, may enter the proceedings for hearing by the judge as a default action.

### **Proofs requisite for entry of default civil bill**

- 5.—(1) Upon entry of the proceedings under Rule 4, the plaintiff shall lodge in the Office—
- (a) the original default civil bill and original notices with endorsements of service or, where Order 6 Rule 3(3) applies, an affidavit of service, or, where Order 6 Rule 3(2)(b) or Rule 3(7) applies, the solicitor's certificate referred to in Rule 12 of Order 6;
  - (b) an affidavit in verification of the plaintiff's claim in Form 53 made by the plaintiff or on his behalf by some other person who can swear positively to the facts and sworn within a period of twenty-eight days ending on the entry day;
  - (c) a certificate in Form 54, which may be endorsed on the affidavit given under paragraph (b) and which shall be given within a period of seven days ending on the entry day, by the plaintiff's solicitor or, where the plaintiff is suing in person, the plaintiff, that a notice disputing his liability for the claim in whole or in part or alleging a counterclaim has not been received from the defendant and either that—
    - (i) no other communication has been received from the defendant; or
    - (ii) a copy of any such communication so received is attached;and stating whether any part of the amount claimed in the affidavit made under paragraph (b) has to his knowledge been paid by the defendant.
- (2) The solicitor's certificate referred to in Rule 12 of Order 6 shall be in Form 59.

### **Default decree**

6.—(1) Upon consideration of the documents lodged under Rule 5 and on proof of service of the default civil bill and notices under Rule 3, the judge may without further evidence make a default decree in Form 55 against the defendant for the sum shown by the documents lodged under Rule 5 to have been due at the date of service of the default civil bill together with costs but crediting any amount actually paid after such service.

(2) Where the defendant fails within the time provided in Rule 4 to give notice that he disputes his liability for the claim in whole or in part or alleges a counterclaim but appears and proves to the satisfaction of the judge that he has just grounds for disputing his liability for the claim in whole or in part upon the merits or has a counterclaim, the judge may upon such terms as to costs and otherwise as to him seems just either hear and determine the case or adjourn the hearing and direct notice thereof to be given to the parties.

### **Where defendant disputes claim or alleges a counterclaim**

7. Where the defendant gives notice within the time specified in Rule 4 that he disputes his liability for the claim in whole or in part or alleges a counterclaim, the plaintiff shall enter the action for hearing as an ordinary civil bill action and subsequent proceedings shall be had as if the action had been commenced in accordance with Order 5.

## **PART III**

### **SUMMARY ACTIONS**

#### **Summary civil bill**

8. A summary action shall be commenced by a summary civil bill in Form 56.

#### **Notices to be annexed to summary civil bills**

9. There shall be annexed to the copy of a summary civil bill served on the defendant a notice in Form 51 addressed to the plaintiffs solicitor and a notice in Form 52 addressed to the appropriate chief clerk.

#### **Application for summary decree**

10.—(1) If, on the expiration of fourteen days from the service of the copy of the summary civil bill and notices, the plaintiffs solicitor has not received notice from the defendant that he disputes his liability for the claim in whole or in part or alleges a counterclaim, the plaintiffs solicitor may make application in the Office on behalf of the plaintiff for a summary decree to be made against the defendant.

(2) Such application may be endorsed on the affidavit referred to in Rule 11.

11.—(1) Upon such application the plaintiffs solicitor shall lodge in the Office—

- (a) the original summary civil bill and original notices with endorsements of service or, where Order 6 Rule 3(3) applies, an affidavit of service or, where Order 6 Rule 3(2)(b) or Rule 3(7) applies, the solicitor's certificate referred to in Rule 12 of Order 6;
- (b) an affidavit in verification of the plaintiffs claim in Form 53 made by the plaintiff or on his behalf by some person who can swear positively to the facts and sworn within a period of twenty-eight days ending on the date of the application;
- (c) a certificate in Form 57, which may be endorsed on the affidavit lodged under paragraph (b) and which shall be given within a period of seven days ending on the date of the application, by the plaintiffs solicitor that a notice disputing his liability for the claim in whole or in part or alleging a counterclaim has not been received from the defendant and either that—
  - (i) no other communication has been received from the defendant; or
  - (ii) a copy of any such communication so received is attached;and stating whether any part of the amount claimed in the affidavit made under paragraph (b) has to his knowledge been paid by the defendant; and
- (d) a summary decree in Form 58.

(2) The solicitor's certificate referred to in Rule 12 of Order 6 shall be in Form 59.

#### **Summary decree**

12. On the lodgment in the Office of the documents required by Rule 11—

- (a) where the chief clerk has not received a notice from the defendant disputing his liability for the claim in whole or in part or alleging a counterclaim he may issue a summary decree in Form 58 for the sum shown by the documents lodged under Rule 11 to have been due at the date of service of the summary civil bill together with costs but crediting any amount actually paid after such service;
- (b) where such a notice has been so received, the chief clerk shall inform the applicant accordingly and the proceedings shall continue in accordance with Rule 13 as if such a notice had also been received by the applicant.

#### **Where defendant disputes liability or alleges a counterclaim or chief clerk refuses to issue a summary decree**

13. Where the defendant gives notice within the time specified in Rule 10 that he disputes his liability for the claim in whole or in part or alleges a counterclaim or where the chief clerk refuses to issue a summary decree, either party may, upon seven days' notice to the other party, enter the action for hearing at the next or next but one sitting of the court and it shall thereupon proceed as if it had been commenced in accordance with Order 5. A copy of such notice shall be lodged in the Office on entry.

### PART IV

#### MISCELLANEOUS PROVISIONS

##### **Costs payable in settlement**

14. Where a defendant pays the amount due within fourteen days from service of the default or summary civil bill and also within that period pays fifty per centum of the solicitor's costs in column 2 of Table 3 in Part I of Appendix 2 together with the plaintiff's outlay properly incurred to date of settlement he shall not be liable for any further costs.

##### **Costs in certain cases**

15. Any additional costs incurred by a plaintiff by reason of the fact that the defendant sent notice disputing his liability for the claim in whole or in part or alleging a counterclaim to the chief clerk only and not to the plaintiff's solicitor or the plaintiff, shall, unless the judge otherwise directs, be payable by the defendant.

##### **Decree against one of two or more defendants**

16. Where there are two or more defendants and one has failed to give notice that he disputes his liability for the claim in whole or in part or alleges a counterclaim and has not paid the sum due and costs, the plaintiff may proceed in accordance with the foregoing Rules of this Order to have a decree issued against that defendant, without prejudice to the plaintiff's right to proceed with the action against any other defendant.

##### **Notice under section 139(1)(b) of the Consumer Credit Act 1974**

17. Where a defendant in accordance with section 139(1)(b) of the Consumer Credit Act 1974(10) desires to have a credit agreement re-opened he shall serve notice that he so desires on the chief clerk and on the plaintiff's solicitor or, where the plaintiff is suing in person, on the plaintiff within fourteen days from service of the copy of the default or, as the case may be, summary civil bill and thereupon the plaintiff shall enter the action for hearing as an ordinary civil bill action and

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(10) 1974 c. 39

subsequent proceedings shall be had as if the action had been commenced in accordance with Order 5.

## ORDER 13

### Hearing of proceedings together and selected actions

#### Generally

1. Actions or matters pending in the same, court may be heard together by order of the judge of his own motion or on the application of any party on notice.

#### Selected action where several plaintiffs

2.—(1) Where several actions by different plaintiffs against the same defendant are proceeding in the same court in respect of causes of action arising out of the same breach of contract, wrong or other circumstances, the defendant may, on filing an undertaking to be bound, so far as his liability in the several actions is concerned, by the decision in such, one of the actions as may be selected by the judge, apply to the judge for an order to stay the actions, other than the one selected, until a decree is given in the selected action.

(2) An application under this Rule shall be made on notice to the plaintiffs who would be affected by any order made thereon.

#### Where a decree given in favour of defendant in selected action

3.—(1) If a decree in a selected action under Rule 2 is given in favour of the defendant, the defendant shall be entitled to his costs up to the date of the order staying proceedings against every plaintiff whose action is stayed, unless any such plaintiff gives notice to the chief clerk to enter his action for hearing.

(2) On a decree in the selected action being given in favour of the defendant, the defendant shall send to every plaintiff a notice in Form 60 and, if any such plaintiff gives notice to the chief clerk to enter his action for hearing, the chief clerk shall appoint a day for the hearing and send notice thereof to both plaintiff and defendant before the beginning of a period of fourteen days ending on the day so appointed.

#### Where decree given against defendant in selected action

4.—(1) If a decree in a selected action is given against the defendant, the plaintiff in any action stayed shall be at liberty to proceed for the purpose of ascertaining and recovering his debt or damages and costs.

(2) On a decree in the selected action being given against the defendant, the chief clerk shall send to each plaintiff a notice in Form 61, and a plaintiff desiring to proceed shall, within one month from the date of the notice, give to the chief clerk notice to enter his action for hearing, and on receipt thereof the chief clerk shall appoint a day for the hearing and send notice thereof to both plaintiff and defendant before the beginning of a period of fourteen days ending on the day so appointed.

#### Selected action where several defendants

5.—(1) Where several actions by the same plaintiff against several defendants are proceeding in the same court and the event of the action depends on the finding of the judge on some question common to all of them, the judge may at any time select one of them for hearing and stay proceedings in all the others until a decree is given in the selected action.

(2) After a decree is given in the selected action, unless the plaintiff and the defendant in the other actions or any of them submit to a decree in accordance therewith, the other actions shall proceed.

(3) On receipt of notice from the plaintiff or defendant in any such action to enter it for hearing, the chief clerk shall appoint a day for the hearing and shall send notice thereof to both plaintiff and defendant before the beginning of a period of fourteen days ending on the day so appointed.

#### **Time for giving notice to enter action for hearing after decree in selected action**

6. A notice under Rule 3, Rule 4 or Rule 5 to enter an action for hearing shall be given to the chief clerk within one month from the date on which the plaintiff or defendant giving the notice receives notice of the decree in the selected action or, where an appeal is made against the decree, of the decision given on the appeal.

## ORDER 14

### Interlocutory applications

#### **General procedure**

1.—(1) Where by any enactment or by direction of the court any application in the course of an action or matter is expressly or by implication authorised to be made to the court or to the judge or to the circuit registrar or chief clerk, the following provisions shall apply—

- (a) the application shall be made either in or out of court and either *ex parte* or on notice in accordance with the terms of the relevant enactment or direction and in the absence of any express provision to the contrary the application shall be made on notice;
- (b) where made on notice—
  - (i) the notice shall be in writing and shall be served on the opposite party and filed in the Office before the beginning of a period of two days ending on the day of hearing of the application unless the judge or circuit registrar or, as the case may be, the chief clerk dispenses with notice or gives leave for shorter notice; and
  - (ii) the party serving the notice shall be responsible for ascertaining that the judge or circuit registrar or, as the case may be, the chief clerk will be available to hear the application on the day, at the time and in the place for which notice is served;
- (c) an affidavit shall not be necessary unless the judge or circuit registrar or, as the case may be, the chief clerk otherwise directs;
- (d) upon the hearing of the application the judge or circuit registrar or, as the case may be, the chief clerk may make such order as he considers just;
- (e) where the application is made to the circuit registrar or chief clerk, he may, if in doubt as to the proper order to be made, refer the application to the judge forthwith or at the next convenient opportunity and the judge may hear the application and make such order as he considers just;
- (f) where the circuit registrar or chief clerk has made an order to which this Order applies, any party who is dissatisfied therewith may apply to the judge on notice to vary or rescind the order and on the hearing of the application the judge may confirm, vary or rescind the order and may make such order as he considers just. This sub-paragraph shall not apply to an order or direction under Rule 2(3) of Order 21.

(2) The jurisdiction of the court to hear and determine any application in the course of an action or matter may, by direction or with the consent of the judge, be exercised by the circuit registrar unless there is a provision to the contrary in any enactment.

### **Power to impose terms**

2. The Judge or, where the application is authorised to be made to the circuit registrar, the circuit registrar may, as a condition of granting any application, impose such terms and conditions as he thinks fit and, without prejudice to the generality of the foregoing provisions, may make orders requiring any party to—

- (a) give security; or
- (b) give an undertaking; or
- (c) pay money into court; or
- (d) give a power of re-entry;

and may make such order as to costs as he considers just.

### **Directions**

3. In any action or matter the judge or, where the application is authorised to be made to the circuit registrar, the circuit registrar may at any time on the application on notice of any party or of his own motion give such directions as he thinks proper.

### **Adjournment**

4.—(1) The judge or, where the circuit registrar hears the original application, the circuit registrar may at any time and from time to time upon application or of his own motion, adjourn the hearing of any proceedings or step in the proceedings either generally with liberty to re-enter or for such period not exceeding twelve months as will in his opinion best meet the ends of justice.

(2) Notice of any such adjournment shall be given by the chief clerk to all parties and persons interested who are not present when the order is made.

(3) If the hearing of the action or matter is adjourned generally, any party may apply to have a day fixed for the hearing and the chief clerk shall fix a day for the hearing and give notice to all the parties in Form 62.

(4) If no application is made under the last foregoing paragraph within 12 months after the day on which the hearing of the action or matter was adjourned generally, the chief clerk may give notice to all parties in Form 279, and unless any party applies within 14 days after receipt of the notice to have a day fixed for the hearing or to have the hearing again adjourned and the application is granted, the action or matter shall be struck out.

### **When defendant entitled to ask for security for costs**

5.—(1) Where a defendant neither resides nor carries on business within the division of the court in which an action or matter is commenced, he may apply in Form 63 to the circuit registrar, in accordance with Rule 1, for an order directing the plaintiff to deposit in court a sum of money as security for his costs.

(2) The application shall be sent to the chief clerk by post or otherwise—

- (a) where the defendant returns the notice sent with a default or summary civil bill, with that notice;
- (b) in any other case within eight days of the service of the civil bill on him;

together with an affidavit showing a defence on the merits and stating the grounds of defence.

(3) If the circuit registrar refuses the application, the chief clerk shall send notice to the defendant in Form 64.

(4) If the circuit registrar grants the application, he shall fix the amount of the security and the chief clerk shall send to the plaintiff a notice in Form 65.

(5) Where a deposit is ordered—

- (a) if the deposit is duly made, the chief clerk shall send notice to the defendant in Form 66;
- (b) if the deposit is not duly made, the chief clerk shall send notice to the parties in Form 67, and the action or matter shall be struck out, and the defendant shall be entitled to recover the costs incurred by him before the receipt of Form 67, and if such costs are not paid within fourteen days after demand made therefor, the judge may on the application of the defendant give a decree for the amount of such costs together with the costs of the application to him:

Provided that if the deposit is not made in due time, but is made later the judge may order the action or matter to be reinstated, and the chief clerk shall send notice thereof to the defendant and inform him on what day the action or matter will be heard.

#### **Application for interim injunction, etc.**

6. Where any party or intending party desires, before the hearing, an immediate order—

- (a) in the nature of an injunction; or
- (b) for the appointment of a receiver; or
- (c) for taking any accounts; or
- (d) for making any inquiries;

he may apply to the judge on affidavit setting forth the facts rendering the order immediately necessary and the judge may make such order as he thinks fit.

#### **Recovery of goods where lien claimed**

7.—(1) Where in any action the plaintiff claims the recovery of specific property other than land and the defendant admits the title of the plaintiff but claims to retain the property by virtue of a lien or otherwise as security for the payment of a sum of money; the judge may order that the plaintiff be at liberty to pay into court, to abide the event of the action, the sum of money in respect of which the defendant claims to retain the property and such further sum (if any) for interest and costs as the judge may think fit, and may order that upon such payment into court the defendant shall return the property to the plaintiff:

(2) This Rule shall with the necessary modifications apply to a counter-claim as it applies to a claim.

#### **Preservation, etc., of subject matter**

8. Where a *prima facie* case of liability under any contract is established, and there is alleged, as a matter of defence, a right to be relieved wholly or partially from that liability, the judge may make an order for the preservation or interim custody of the subject-matter of the action or may order that the amount in dispute be brought into court or otherwise secured.

#### **Order for detention, etc.**

9.—(1) The judge may, upon the application of any party to an action or matter, make any order for the detention, preservation, inspection, surveying, measuring, weighing or analysing of any property, document or thing, being the subject of the action or matter or as to which any question may arise therein, and may authorise any person to enter upon or into any land or building in the possession of any party to the action or matter, and authorise any samples to be taken, or any observation, plan,



photograph or model to be made, or copy of a document or experiment to be made, which may be necessary or expedient for the purpose of obtaining full information or evidence.

(2) Where an order is made for inspecting, surveying, measuring, weighing or analysing any property or making any copy or experiment, or taking any sample, or making any plan, photograph or model, by any person named in the order, the order may authorise the circuit registrar to examine upon oath and take the deposition of the person so named as to the result, accuracy or fairness of what he has done in pursuance of the order, and may also empower any party to give in evidence the deposition so taken.

#### **Order for sale of perishables, etc.**

**10.** The judge may, upon the application of any party to an action or matter, order the sale by a person to be named in the order, of any subject matter of the proceedings which—

- (a) is of a perishable nature; or
- (b) incurs charges for food or keep; or
- (c) ought for any other sufficient reason to be sold at once.

#### **Preparation of order, etc.**

**11.—**(1) A draft of an order under Rule 6, 7, 8, 9 or 10 shall be prepared by the party making the application and shall be settled, signed and sealed by the chief clerk or, where the order is made by the judge of his own motion, the chief clerk shall prepare, sign and seal the order.

(2) The order when signed and sealed shall be filed by the chief clerk who shall issue a certified copy to the applicant or his solicitor for service.

## **ORDER 15**

### **Discovery, inspection and production of documents**

#### **Discovery of documents**

**1.—**(1) Any party to any proceedings may give notice in writing to any other party requiring him to make discovery on oath of the documents relating to any question in the proceedings which are or have been in his possession or power.

(2) If the party to whom the notice has been given does not comply with it within three days from its receipt, the party who has given the notice may apply to the judge on notice for an order directing the other party to make such discovery.

(3) The judge may at any time make an order for discovery on the application of a party notwithstanding that notice has not been given, where the judge is satisfied that there were reasonable grounds for not giving it.

(4) On the hearing of the application the judge may order such discovery to be made, either on oath or otherwise and either generally or limited to certain classes of documents as the judge thinks fit, but discovery shall not be ordered if and so far as the judge is of opinion that it is not necessary either for disposing fairly of the proceedings or for saving costs.

(5) If an order is made it shall be drawn up by the applicant in Form 68, settled by the chief clerk and served by the applicant on the party against whom it is made.

(6) The affidavit to be made by a party against whom an order for discovery has been made shall be in Form 69 and shall be filed in the Office and a copy thereof delivered to the party who obtain the order within the time named in the order.

### **Inspection of documents**

2.—(1) Any party to any proceedings may at any time give to the other party notice to produce any document in his possession or power which is relevant to the issues, for the inspection of the party giving the notice and to permit him to take copies thereof.

(2) Any party not complying with such a notice shall not afterwards be at liberty to put any such document in evidence unless he satisfies the judge that he had some cause or excuse which the judge deems sufficient for not complying with the notice, in which case the judge may allow the document to be put in evidence on such terms as to costs and otherwise as he thinks fit.

(3) The party to whom such notice is given shall within two days from the receipt thereof, if all the documents therein referred to have been set forth by him in an affidavit of documents, or, if any of the documents referred to in the notice have not been set forth by him in any such affidavit, then within four days from the receipt of the notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof and the place at which the documents or such of them as he does not object to produce may be inspected and stating which, if any, of the documents he objects to produce and on what grounds.

(4) The inspection shall be given—

- (a) where a party is not acting by his solicitor, at his residence or place of business; or
- (b) where a party is acting by a solicitor, at the solicitor's address for service;

but inspection of bankers' books or other books of account or books in constant use for the purposes of any trade or business shall be given at their usual place of custody.

(5) If any party served with a notice under paragraph (1) omits to give notice of a time and place for inspection in accordance with paragraphs (3) and (4), the judge may on application make an order for inspection at such time and place as he thinks fit.

(6) An application to inspect documents, except such as are referred to in the affidavits of the party against whom the application is made, shall be supported by an affidavit showing—

- (a) of what documents inspection is sought;
- (b) the grounds on which inspection of them is sought; and
- (c) that they are in the possession or power of the other party;

but the judge shall not make an order for inspection of such documents if and so far as he is of opinion that it is not necessary either for disposing fairly of the proceedings or for saving costs.

### **Business books**

3.—(1) Where inspection of any business books is applied for, the judge may, if he thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and the affidavit shall state whether or not there are in the original book any and if so what erasures, interlineations or alterations.

(2) Notwithstanding that a copy has been supplied under paragraph (1), the judge may order inspection or production of the book from which the copy was made.

### **Privilege**

4. Where privilege is claimed for any document, the judge may inspect the document for the purpose of deciding whether the claim of privilege is valid.

### **Possession of specified documents**

5.—(1) The judge may, on the application of any party to proceedings at any time and whether an affidavit of documents has or has not already been ordered or made, make an order requiring any other party to state by affidavit whether any particular document or class of documents, specified or indicated in the application, is or has at any time been in his possession, custody or power, and if not then in his possession, custody or power, when he parted with the document or documents and what has become of it or them.

(2) The application shall be supported by affidavit stating that in the belief of the deponent, the party against whom the application is made has, or at some time has had, possession, custody or power of the particular document or class of documents specified or indicated in the application, and that it relates to a matter in question in the proceedings.

### **Postponement of discovery**

6. The judge may postpone any application for discovery or inspection of documents until after the determination of any issue or question in dispute.

### **Security**

7.—(1) A party making application for discovery of documents may be ordered to pay into court as security such sum as the judge thinks fit.

(2) An order for discovery shall state the amount ordered to be paid into court, or that payment into court is dispensed with and, where payment into court is ordered, the party seeking discovery shall with the order for discovery serve a copy of the receipt for the payment into court, and the party from whom discovery is sought shall not be bound to make discovery unless and until the said copy has been served.

### **Order for production of documents**

8. The judge may at any stage of the proceedings order the production upon oath by any party thereto of any documents in his possession, custody or power, relating to any question in the proceedings, and the judge may deal with the documents when produced in such manner as he considers just.

### **Non-compliance with the order**

9. Where an order for discovery, inspection or production of documents is not complied with—
- (a) if the party failing to comply is a plaintiff, the judge may order the action to be dismissed for want of prosecution or stayed until the order is complied with;
  - (b) if the party failing to comply is a defendant, the judge may order that he be debarred from defending the action altogether or allowed to defend only on such terms as the judge thinks fit;

and the judge may make such order as to costs, including the costs of the proceedings, as he considers just.

### **Outlay and fees on proceedings under this Order**

10. No outlay or fees incurred or paid by any party on or in connection with any proceedings under this Order shall be repaid to that party by any other party to the proceedings unless the judge—

- (a) is satisfied that in the circumstances of the case it was necessary or expedient to invoke the provisions of this Order; and

(b) makes an order requiring such repayment.

**Order to apply to minors**

11. This Order shall apply to minor plaintiffs and defendants and their next friends and guardians ad litem.

**ORDER 16**

**Sitting in chambers**

1. The judge may sit in chambers at any time and place and before, at or after the ordinary sittings of his court for the despatch of such part of the jurisdiction of his court as can without detriment to the public interest be heard in chambers, or for such matters as the judge shall from time to time think may be more conveniently disposed of in chambers than in open court.

**Adjournment from court to chambers and vice versa**

2.—(1) The judge may when sitting in open court adjourn for consideration in chambers any matter which in his opinion would be more conveniently disposed of in chambers.

(2) The judge may when sitting in chambers direct any matter to be heard in open court which he thinks ought to be so heard.

**Mode of proceeding**

3. Unless otherwise provided, every application at chambers not made *ex parte* shall be made by summons in Form 70.

**ORDER 17**

**References, accounts and inquiries**

**PART I**

**REFERENCES UNDER ARTICLE 32 OF THE ORDER**

**Order for reference**

1.—(1) An order under Article 32 of the Order for the reference of any proceeding or question or matter of account to the circuit registrar or other officer (in this Order referred to as “the officer”) for inquiry or report may be made at any stage of the proceedings by the judge of his own motion or on the application of any of the parties.

(2) In making an order for such a reference, the judge may give all such directions as he thinks fit as to the time and place of the sittings thereof, notices to the parties affected thereby, the summoning of witnesses and the time and place for the consideration of the report thereon.

**Conduct of reference**

2.—(1) Subject to any order of the judge as to the conduct of the reference—

- (a) the officer shall hear any parties entitled to attend, and their counsel or solicitors;
- (b) the officer may inspect any property or thing concerning which any question arises;

- (c) the attendance of witnesses may be enforced by summons and the inquiry shall be conducted in the same manner, as neatly as circumstances permit, as if the inquiry were the hearing of an action;
  - (d) subject to the provisions of paragraph (3), the officer shall have the powers of a judge with respect to the administration of oaths, taking of affidavits, discovery and production of documents and in the conduct of the inquiry;
  - (e) the officer may submit or may direct any of the parties to submit for the decision of the judge any question arising in the inquiry.
- (2) Where a matter of account is referred to the officer, the officer, in addition to any powers conferred by paragraph (1), may—
- (a) direct any accounting party to make out and furnish his account within a time to be stated;
  - (b) give directions as to the manner in which the account is to be taken or the inquiry made and as to the bringing of all necessary parties before the court;
  - (c) direct and settle advertisements to be published for creditors or persons having or claiming an interest in the subject-matter of the proceedings;
  - (d) direct that any books of account, in which any account required to be taken has been kept, shall be taken as *prima facie* evidence of the truth of the matter therein contained;
  - (e) fix a time for adjudicating on claims;
  - (f) give such other directions as he may think proper.
- (3) Nothing in this Rule shall authorise the officer to commit any person to prison, or to enforce any order by attachment.

### **Application of provisions of Part II**

3. The judge may direct that any of the provisions of Part II which he considers appropriate shall apply to any particular reference under this Part.

## **PART II**

### **ACCOUNTS AND INQUIRIES IN EQUITY PROCEEDINGS**

#### **Form of primary decree**

4. A primary decree in equity proceedings directing accounts to be taken or inquiries to be made shall be in such one of Forms 71 to 79 as is applicable to the case.

#### **General account**

5. Unless the judge otherwise orders, every order for a general account of the estate of a deceased person shall direct an inquiry as to what parts (if any) of such estate are outstanding or undisposed of.

#### **Taking of accounts and making inquiries**

6.—(1) Where a primary decree in equity proceedings directs that an account be taken or inquiries made—

- (a) the account shall be taken and the inquiries shall be made by the circuit registrar (in this Part referred to as “the officer”);
- (b) the provisions of Rule 2 shall apply; and
- (c) the officer shall direct the chief clerk to issue a summons to proceed in Form 70 addressed to all parties required or entitled to attend directing their attendance at such courthouse or

other place which the officer considers to be convenient to the parties; and such summons shall be prepared and served by the party or solicitor having carriage of the proceedings and shall be returnable not less than fourteen days from the date of issue.

- (2) Where an account is directed to be taken—
- (a) the accounting party shall, unless the judge otherwise directs, make out his account in writing and verify it by affidavit;
  - (b) the items on each side of the account shall be numbered consecutively; and
  - (c) the account shall be exhibited to the affidavit which shall be lodged in the Office.

### **Advertisements**

7.—(1) Where an advertisement is published for creditors, incumbrancers, next-of-kin or persons having or claiming interests in the subject-matter of the proceedings, the advertisement shall direct the claimants to send to the officer or to the solicitor having carriage within a stated time their names and addresses and full particulars of their claims; and the nature of the security (if any) held by them, and shall fix a date for adjudicating on the claims:

(2) The officer may direct and settle any such advertisement at the time of the issue of any summons to proceed or at any hearing of the reference and such advertisement shall before the beginning of a period of fourteen days ending on the date for adjudication on claims be inserted by the party or solicitor having carriage of the proceedings in such newspapers as the officer shall direct.

- (3) On the expiration of the time fixed by the advertisement the officer may—
- (a) require an affidavit from the party or solicitor having carriage as to any claims received by him pursuant to the advertisement and as to the result of the investigation by that party or solicitor of any such claims;
  - (b) adjudicate on the claims having regard only to those claims of which he then has notice.

### **Pedigree and proofs**

8. On a request by notice in writing from the officer, every person claiming as heir-at-law, devisee, next-of-kin or legatee shall, within such time as is specified in the notice, produce or transmit to the officer any pedigree or proof mentioned in such notice.

### **Surcharge**

9. A party seeking to charge an accounting party beyond what he has by his account admitted to have received, shall give notice to the accounting party stating the amount sought to be charged and particulars thereof and shall file a copy of such notice in the Office.

### **Claims of creditors**

- 10.—(1) The officer may in Form 80 require any creditor—
- (a) to file an affidavit in support of his claim; or
  - (b) to attend at the time appointed for adjudicating on claims; or
  - (c) to produce at any time appointed for adjudicating on claims any deeds or documents required to prove his claim,

(2) Every secured creditor shall deliver his security at the Office before, or attend and produce his security at; the time appointed for adjudicating on claims.

(3) At the time appointed for adjudicating on the claims, the officer shall take the evidence of the executor, administrator or other accounting party upon the claims, and may—

- (a) allow any of the claims without further proof;
  - (b) direct an investigation of all or any of the claims not allowed, and require such further particulars, information or evidence relating thereto as he may think fit; and
  - (c) require any claimant to attend and prove his claim.
- (4) The officer shall give notice in Form 81 to every claimant whose claim has not been allowed.
- (5) The officer may allow to a claimant the costs of proving his claim and any costs so allowed may be added to the claim.

### **Right of application to the judge**

**11.** Any party may, before the proceedings before the officer are concluded, apply by way of motion on notice to the judge for his ruling upon any matter arising in the course of the proceedings.

### **Report to judge**

**12.—**(1) The report of the reference shall be made by the officer by certificate in writing to the judge in such one of Forms 80 to 86 as is applicable, and the certificate shall lie in the Office and may be inspected by any party, and a copy shall be supplied to any party on payment of the prescribed fee.

(2) The party or solicitor having carriage of the proceedings shall, in such manner as the officer directs, give notice in Form 87 to all parties to the proceedings that the certificate may be inspected in the Office by any parties interested therein or affected thereby.

(3) Any party to the proceedings—

- (a) may apply on not less than eight days' notice for the consideration by the judge of the officer's certificate;
- (b) may, on giving at least four days' notice to the chief clerk and the other parties, apply in Form 88 to the judge on the day fixed for the consideration of the certificate for a variation of the certificate or for the remittal of the certificate or any part of it for further inquiry or report.

(4) On the hearing of an application for the variation or remittal of a certificate or any part of it, the judge may confirm or vary the certificate and may make such order thereon in such one of Forms 89 to 96 or otherwise as he thinks fit or may remit it or any part of it to the officer for further inquiry or report.

(5) Where no application is made to vary the certificate, the judge shall, unless he otherwise orders, confirm the certificate and may make such order thereon as he thinks fit.

### **Order on applications for administration or execution of trusts, etc.**

**13.** On an application for the administration of the estate of a deceased person or the execution of a trust or otherwise involving the taking of an account, where no accounts or insufficient accounts have been rendered, without prejudice to any other power, the judge—

- (a) may order that the application shall stand over for a certain time, and that in the meantime the accounting parties shall render to the applicant a proper statement of their accounts, and any such order shall contain an intimation that in default of compliance, the accounting parties may be ordered to pay the costs of the proceedings or such part thereof as the judge may think fit;
- (b) where necessary to prevent proceedings by other persons, may make an order with a proviso that no proceedings are to be taken thereunder without leave of the judge.

## **Interpretation**

14. In this Part “claimant” includes creditor and person having or claiming an interest in the subject-matter of the proceedings.

# **ORDER 18**

## **Receivers**

### **Appointment**

1. Where before, at or after the hearing of any proceedings it appears to the judge expedient that a receiver be appointed, such appointment may be made by the judge of his own motion or on the application of a party.

### **Security**

2. Every receiver other than an officer of the court shall, unless otherwise ordered, give such security to the circuit registrar for the faithful discharge of his duties, and the payment over of money, as the judge shall direct.

### **Remuneration**

3. Every receiver shall receive such reasonable remuneration as the judge may authorise.

### **Accounts**

4.—(1) Every receiver shall deliver at the Office for examination by the circuit registrar such accounts at such time or times as the judge or circuit registrar may direct.

(2) Where the duties of a receiver are continuous, no longer period than one year shall in any case be allowed between each examination of accounts.

(3) Every such account shall, unless otherwise ordered, be verified by affidavit.

(4) When any such account has been delivered, the chief clerk shall fix a time for the passing of the account and shall give notice thereof to the receiver and to the parties.

### **Passing account**

5. At the time appointed for the passing of the account, the receiver and any party may, and if required by the circuit registrar shall, attend at the Office and the circuit registrar may require the receiver to produce any vouchers necessary for verifying the account and may disallow any item not proved to his satisfaction.

### **Certificate of circuit registrar**

6. The circuit registrar shall after examining the account make and sign a certificate stating the result of the examination.

### **Review by judge**

7. The receiver or any person dissatisfied with the allowance or disallowance by the circuit registrar of any item in the account may within eight days from receiving notice of the signing of



the certificate under Rule 6 apply to the judge on notice for a review of the decision of the circuit registrar, and the judge may make such order on the application as he thinks fit.

**Direct payments by receiver**

8. The judge may order the receiver—
- (a) to pay from time to time out of any sums that may be in or come into his hands the head rents or other outgoings payable in respect of, and the interest upon, any mortgages or other charges upon any lands over which he is acting as receiver;
  - (b) to pay over at any time to the party entitled to the beneficial interest or to the guardian of any minor any accruing rents or interest instead of paying them into court;

and may authorise the receiver to take credit for such payments in his accounts.

**Payment of balance into court**

9. Any balance certified to be due from the receiver shall, subject to any direction given by the judge on review under Rule 7, be paid into court within fourteen days from the date of the certificate of the circuit registrar.

**Default by receiver**

10. Where any receiver has failed to deliver or pass any account or to make any payment certified to be due from him, the judge may require the receiver to attend before him to show cause why such default has been made and may make such order as he thinks fit, including an order for enforcing any bond or security given by the receiver, and a direction to charge the receiver with interest at five per centum per annum on any balance which has remained in his hands for more than fourteen days from the date on which it was certified to be due, or the judge may discharge the receiver and appoint another, and may make such order as to costs as he thinks just.

**ORDER 19**

**Assessors**

**Application for an assessor**

1. A party who desires a person of skill and experience in the matter to which the proceedings relate to be appointed as an assessor to assist the judge shall, before the beginning of a period of eleven days ending on the day fixed for the hearing, on notice to the other party lodge in the Office an application together with the amount of the assessor's fee, and thereupon the chief clerk shall send a copy of the application to the judge.

**Appointment of assessor**

- 2.—(1) Before giving his decision on the application, the Judge may hear both parties.
- (2) If the judge grants the application, the chief clerk shall give notice to the parties and shall appoint such person who is willing to act as may be agreed upon by the parties or in default of agreement as may be specified by the judge.

**Refusal of application**

3. If the application is refused, the chief clerk shall so inform the parties.

### Absence of assessor

4. If at the time and place appointed for the hearing the assessor appointed does not attend, the judge may hear the action or matter without his assistance.

### Remuneration

5. Every assessor shall, unless the judge in the circumstances of any particular case otherwise orders, receive for each day's attendance a fee according to the following scale, together with such sum for his expenses as the judge or chief clerk shall order—

Where the amount claimed—	<i>Amount of fee</i>
Does not exceed £20	£2.10
Exceeds £20 and does not exceed £50	£4.20
Exceeds £50 and does not exceed £100	£6.30
Exceeds £100	£8.40

### Fees for adjourned hearing

6. Where a hearing at which an assessor is in attendance is adjourned, the party who applied for the appointment of an assessor shall forthwith upon the order of adjournment being made deposit in the Office the assessor's fee for the day to which the hearing is adjourned.

### Costs

7. Any sum paid in respect of assessor's fees shall be costs in the proceedings, unless the judge otherwise orders.

### Pilotage Act 1913

8. This Order shall not apply to an appeal under section 28 of the Pilotage Act 1913(11).

## ORDER 20

### Arbitration

#### Fixing of date

1. Where proceedings are, in accordance with Article 31 of the Order, ordered to be referred to arbitration, the chief clerk shall cause the order to be forthwith lodged with the arbitrator thereby appointed who shall within fourteen days thereafter fix the date of the hearing after consultation with the parties or their solicitors.

#### Conduct of arbitrations

2. Every such reference shall be conducted as nearly as may be in the same manner and in accordance with the same rules and practice as a hearing by a judge.

**Restriction on provision of copies of deeds, etc.**

3. Where original deeds or documents are available, copies shall be brought in only by special direction of the arbitrator.

**Arbitrator's powers of adjournment, inspection, etc.**

4. The arbitrator may hold the hearing at or adjourn it to any place which he may deem most convenient and may have any inspection or view which he may deem expedient for the better disposal of the matter before him.

**Report to judge; judge's powers thereon**

5. The arbitrator to whom any cause or matter or any question or issue of fact arising therein has been referred may by his report submit any question arising out of the reference for the decision of the judge or state any facts specially with power to the judge to draw inferences therefrom, and in any such case such order shall be made on the submission or statement as the judge may direct; and the judge shall have power to require any explanations or reasons from the arbitrator, and to remit the cause or matter or any part thereof for further consideration to the same or to any other arbitrator; or the judge may decide the question referred to any arbitrator on the evidence taken at the hearing under such reference either with or without additional evidence as the judge may direct.

**Witnesses' expenses**

6. The expenses of witnesses shall be measured by the arbitrator as nearly as possible in accordance with the scales prevailing in the court from which the arbitration is referred and such expenses shall be set forth in the award and shall be subject to review by the judge.

**ORDER 21**

**Discontinuance and payment into and out of court**

**Discontinuance by plaintiff**

1.—(1) If a plaintiff desires to discontinue wholly or in part any proceedings against all or any of the parties thereto, he shall give notice thereof in writing to the party or parties as to whom he desires to discontinue, and pay or tender therewith the costs incurred by the party or parties up to the giving of the notice.

(2) Where the payment or tender of costs is not made at the time of discontinuance of the proceedings or is insufficient, the defendant may apply to the court at which the proceedings are or would have been heard for a decree against the plaintiff for such costs and for the costs of attending the court to obtain such decree, and the judge may make such order as to costs as, having regard to any tender made by the plaintiff or other circumstances, he thinks just.

(3) Where proceedings are not wholly discontinued against a party, costs awarded for the discontinued part of the proceedings shall not without leave of the judge be recovered before the proceedings are disposed of.

(4) Discontinuance under this Rule shall not be a defence to any subsequent proceedings, but if subsequent proceedings are brought for substantially the same cause of action before the payment of the costs of the discontinued proceedings, the judge may stay the proceedings until the costs have been paid.

### **Payment into court**

2.—(1) A defendant in any action may, subject to this Rule, upon notice to the plaintiff in Form 97 lodge in court in accordance with paragraph (2) such sum of money as he thinks sufficient to satisfy the plaintiff's claim, together with an undertaking in writing to pay to the plaintiff such sum in respect of costs and expenses reasonably incurred by the plaintiff up to the date of lodgment as may be agreed upon between the parties, or in default of agreement as may on the application of either party in Form 99, and if necessary after both parties have been heard, be settled by the circuit registrar.

(2) Lodgment in court under paragraph (1) may, subject to paragraphs (3) and (4), be made—

- (a) in a remitted action within eight days of the date of the order of remittal or at any time before entry day, whichever is the longer;
- (b) in any other action, at any time before the entry day.

(3) Where the hearing of a remitted action is due to take place before or within seven days after the expiration of such a period as is referred to in paragraph (2)(a), the circuit registrar on an application made to him by motion on notice under Order 14 may give a direction—

- (a) postponing the hearing to a date later in the sittings; or
- (b) adjourning the hearing to the next sittings; and
- (c) fixing the period after lodgment within which the plaintiff may serve notice of acceptance;

and such a direction shall not be subject to appeal.

(4) The judge in adjourning a case under Rule 3(2) of Order 5 and ordering sufficient particulars to be furnished may give leave for the making of any lodgment under this Rule, notwithstanding that the period specified in paragraph (2) has expired and where such leave is given the reference to the entry day in paragraph (2) shall be construed as a reference to the entry day for the sitting to which the hearing is adjourned or to such other day as the judge may specify.

(5) Where under paragraph (1) the circuit registrar has settled a sum for costs and expenses, either party within two days from such settlement may on notice to the other party and the circuit registrar appeal to the judge against such settlement; and on such appeal the judge may affirm or vary the sum so settled.

(6) Money shall be paid into court by lodging it at the county court bank to the credit of the civil bill account in accordance with Order 45 Part I and where any money is so lodged a copy of the notice sent to the plaintiff under paragraph (1) shall be lodged with the chief clerk and a copy shall also be lodged with the bank, such last-mentioned copy being headed with the additional words "Civil Bill Account".

(7) Money paid into court shall remain in court subject to further order unless the plaintiff elects to take it out as hereinafter provided.

### **Payment out of court**

3.—(1) Where money is paid into court under Rule 2 the plaintiff may (subject to any order made by the judge in granting an adjournment such as is referred to in Rule 2(4)), at any time before the opening day of the sitting at which the action is to be heard or subsequently with the consent of the defendant, or in a remitted action within any period fixed under Rule 2(3)(c), sign and serve on the defendant and lodge with the chief clerk a notice in Form 98 accepting the amount in satisfaction of his claim.

(2) Subject to paragraphs (4) and (5), where money is accepted under paragraph (1) all proceedings in the action as between the plaintiff and the defendant who has paid the money into court shall be stayed, and the money paid into court shall be paid out to the plaintiff without the necessity of any decree or order of the court, and the said defendant shall not be liable to any further costs other than those payable under the undertaking given under Rule 2(1).

(3) Within seven days from the day on which the parties agree on, or the circuit registrar settles, the amount due for costs and expenses under an undertaking given under Rule 2(1), or within seven days from the determination by the judge of any appeal under Rule 2(5), the defendant shall pay that amount to the plaintiff, and in default the chief clerk may, on the application of the plaintiff of which at least seven days' notice has been given to the defendant, issue a decree in Form 100. The costs of the application and the decree shall be in the discretion of the circuit registrar.

(4) Where notice of acceptance under paragraph (1) is served by or on behalf of a plaintiff under legal disability—

- (a) the money paid into court shall not be paid out without an order of the judge;
- (b) a notice of intention to apply to the judge for approval of such acceptance shall also be served on the defendant and lodged in the Office;
- (c) the application to the judge shall be made at the time when the action would, if no notice of acceptance has been served, have been heard by the judge; and
- (d) the plaintiff shall be entitled to his costs of the application unless the judge otherwise directs.

(5) A plaintiff in an action for libel or slander who takes money out of court may apply for leave to make in open court a statement in terms approved by the judge in chambers. The chief clerk shall after consultation with the judge fix a time for the hearing of the application by the judge in chambers and shall give at least three days' notice of the hearing to the plaintiff and the defendant and a copy of the proposed statement shall be sent with the notice to the defendant. The application shall be heard by the judge in private. The costs of and in connection with any such application and of the making of the statement in open court shall be in the discretion of the judge.

### **Costs**

4.—(1) Where money has been paid into court by any defendant and the plaintiff does not serve notice of acceptance under Rule 3 and does not obtain a decree against that defendant for an amount, exclusive of costs and expenses, greater than that paid into court, then—

- (a) where the plaintiff is not under legal disability, he shall not be entitled to any costs against the defendant and shall be liable for the costs of that defendant based on the amount lodged; or
- (b) where the plaintiff is under legal disability, costs shall be in the discretion of the judge.

(2) Where a defendant becomes entitled to costs under this Rule such costs shall be paid to him out of the money paid into court before any payment out of the said money is made to the plaintiff.

### **Payments into court not to be communicated to judge**

5. Where money has been paid into court under Rule 2 that fact shall not be communicated to the judge before the determination of all questions of liability and the amount of debt or damages.

### **Decree**

6. Where money has been paid into court by any defendant and the plaintiff does not serve notice of acceptance, a decree in favour of the plaintiff shall be in such one of Forms 101, 102, 103, 104 or 105 as may be appropriate.

### **Payment into court by defendant to counterclaim**

7. Rules 2 to 6 shall apply *mutatis mutandis* in relation to payment into court by a defendant to a counterclaim.

## **Application**

8. Rules 2 to 7 shall not apply—
- (a) to an action where the defence is that of tender before action brought; or
  - (b) to actions in which the title to any corporeal or incorporeal hereditament comes in question.

## **ORDER 22**

### **Transfer, remittal and removal of proceedings**

#### **PART I**

#### **TRANSFER OF PROCEEDINGS FROM ONE COUNTY COURT TO ANOTHER**

### **Generally**

1.—(1) When an action has, in accordance with the provisions of Order 1, been duly commenced in a county court against a defendant who does not reside or carry on business within the division of that court and the defendant desires the action to be transferred to the court for the division in which he resides or carries on business, he may apply *ex parte* in writing without fee to the court in which the action was commenced for an order transferring the action to the other court, and the judge of the court in which the action was commenced may, if after considering the application and the question whether the claim is disputed he thinks that it would be a hardship on the defendant for the action to proceed in the court in which it was commenced, order the action to be transferred to the other court.

(2) The judge may, if he thinks fit, before dealing with an application under paragraph (1), cause notice to be given to the plaintiff that the application has been made and of the day and hour when the plaintiff may attend and be heard, and may if necessary adjourn the hearing of the action.

### **Where judge has interest in subject-matter**

2. If the judge of a court has an interest in the subject-matter of any proceedings in that court, he may, and if so requested by any party shall, order them to be transferred to some convenient court of which he is not the judge.

### **Where officer of court is a party**

3. Where any party to proceedings is an officer of the court, the judge may, and on the application of the opposite party shall, direct the hearing to take place at some convenient court of which such party is not an officer.

### **Where proceedings commenced in wrong court**

4. Where proceedings are commenced in the wrong court, the judge may either—
- (a) transfer the proceedings to the court in which they ought to have been commenced; or
  - (b) with the consent of the parties order that the proceedings shall continue in the court in which they were commenced; or
  - (c) order the proceedings to be struck out, and, if it appears to the judge that the plaintiff knew or ought to have known that the proceedings should have been commenced in another court, may make such an order as to costs as he might have made if the proceedings had been heard and determined in favour of the defendant;

### **Transfer with or without an application**

5.—(1) Any transfer of proceedings from one county court to another authorised by the Order or Rules 2 to 4 may be made by the judge of his own motion, or on the application of any party on not less than three days' notice to the chief clerk and all parties who may be affected.

(2) The order shall be in Form 106.

### **Procedure on transfer**

6. Where a transfer is ordered, the chief clerk of the court in which the proceedings are pending shall send to the chief clerk of the other court a certified copy of all the entries in the books of the first mentioned court together with all the documents in his custody relating to the proceedings and the chief clerk of the court to which the proceedings are transferred shall appoint a day for the hearing and send notice of hearing in Form 107 to all parties interested; and all subsequent proceedings shall be taken in that court.

### **Costs**

7. The costs of the certified copies of the entries in the books of the court and of transmission shall be paid in the first instance by the party on whose application the transfer has been made, or if made by the judge of his own motion, by the plaintiff, without prejudice to the question how they will ultimately be borne.

## **PART II**

### **PROCEEDINGS REMITTED FROM THE HIGH COURT**

#### **Lodgment of documents in and entry of remitted actions**

8.—(1) Where under the provisions of any enactment an action is ordered by the High Court to be heard, or remitted by the High Court for hearing in a county court, the plaintiff shall lodge the original writ of summons or other originating process with the chief clerk of the court for the division named in the order for hearing.

(2) In proceedings within the equity jurisdiction of the court, the writ of summons or other originating process shall be lodged in the Office on or before the entry day for the sittings of the court named in the order for hearing.

(3) In all other proceedings the writ of summons or other originating process shall be lodged in the Office on or before entry day for the sittings of the court named in the order for hearing together with a list in Form 42 arranged in alphabetical order according to the surname of the plaintiff or of the first plaintiff in any proceedings if there is more than one.

(4) For the purposes of paragraph (3), remitted actions may be included in a list lodged under Order 8 Rule 2 but shall be distinguished in that list from other actions included therein.

(5) A defence to a remitted action shall be entered by lodging in the Office, a list in Form 42 arranged in like alphabetical order as aforesaid and may be included in a list under Order 8, Rule 4(1) but shall be distinguished in that list from other actions included therein.

(6) Before lodging the writ of summons or other originating process in accordance with this Rule, the plaintiff shall ascertain that the chief clerk has received a copy of the order of remittal and all documents filed in the proceedings in the High Court in accordance with Rule 9(1) of Order 78 of the Rules of the Supreme Court (Northern Ireland) 1980(12) and shall at the time of such lodgment attach to the summons or other process a certified copy of the notice of remittal served on him by the proper officer of the Supreme Court in accordance with Rule 8(b) of that Order.

(7) Where the only issue in the action remitted for hearing in a county court arises solely on a counterclaim by a defendant, this Rule shall apply as if for references to the plaintiff and to the original writ of summons or other originating process there were substituted references to the defendant and to a copy of such writ or other process together with particulars of the counterclaim, as the case may be.

#### **Costs payable out of money received**

9. Where an order has been made by the High Court for payment of any costs to a solicitor out of the money recovered, the amount of such costs, if not paid before the money was received by the county court in accordance with Article 21 of the Order, shall, on the application of the solicitor, supported by the certificate of the taxing master or other appropriate officer of the High Court, be paid out of the money received, and any investments may be sold for that purpose if the judge or, in his absence, the chief clerk thinks fit.

#### **Judge may require production of writ, etc.**

10. The judge may at any time require a next friend, guardian ad litem, committee or widow to obtain and produce the writ, pleadings and any other document used in the proceedings in the High Court.

### **PART III**

#### **REMOVAL OF PROCEEDINGS TO THE HIGH COURT**

##### **Procedure on removal**

11.—(1) Where an order is made by the High Court for the removal of any proceedings from a county court to the High Court, the chief clerk shall—

- (a) make and certify copies of all entries in the books of the court relating to the proceedings and send them to the proper officer of the High Court, together with all documents filed in the proceedings;
- (b) The costs of removal shall be paid as provided in Rule 7.

### **ORDER 23**

#### **References to the European Court**

##### **Interpretation**

1. In this Order—

“the European Court” means the Court of Justice of the European Communities; and

“order” means an order referring to the European Court for a preliminary ruling under Article 177 of the Treaty establishing the European Economic Community, Article 150 of the Treaty establishing the European Atomic Energy Community or Article 41 of the Treaty establishing the European Coal and Steel Community.

##### **Making of order**

2.—(1) The court may make an order at any stage in the course of an action or matter whether of its own motion or on application by a party before or at the hearing thereof.



(2) Where an application for an order is made before the hearing nothing in Rule 1 of Order 14 shall be construed as authorising the hearing of the application other than by the judge in person and that Rule shall apply accordingly.

#### **Schedule to order to set out request for ruling**

3. An order shall be in Form 109 and shall set out in a schedule the request for the preliminary ruling of the European Court and the court may give directions as to the manner and form in which the schedule is to be prepared.

#### **Stay of proceedings pending ruling**

4. The proceedings in which an order is made shall, unless the court otherwise orders, be stayed until the European Court has given a preliminary ruling on the question referred to it.

#### **Transmission of order to the European Court**

5. When an order has been made the chief clerk shall send a copy thereof to the parties and to the Registrar of the European Court; but, where there is a right of appeal against the order he shall not do so, unless the court otherwise orders, until the time for appealing has expired or, as the case may be, until any appeal has been decided or disposed of.

## **ORDER 24**

### **Evidence**

#### **PART I**

#### **GENERALLY**

#### **Admission by any party**

1. Any party to an action or matter may give notice to any other party that he admits the truth of the whole or any part of the case of the other party, and no expenses incurred after the receipt of the notice in respect of the proof of any matters admitted therein shall be allowed.

#### **Evidence to be taken orally**

2. Save as otherwise provided by these Rules, the evidence of witnesses at the hearing of any action or matter shall be taken orally on oath, and where by these Rules evidence is required or permitted to be taken by affidavit, it shall nevertheless be taken orally on oath if the judge, on any application before or at the hearing, so directs.

#### **Petitions**

3. Evidence in support of or in opposition to a petition may be by affidavit unless the judge otherwise directs.

#### **Power to order proof by affidavit**

- 4.—(1) Subject to paragraphs (2) and (3), the judge may at any time order that—
- (a) any particular fact or facts may be proved by affidavit; or

- (b) the affidavit of any witness may be read at the hearing on such conditions as the judge thinks reasonable; or
- (c) any witness whose attendance in court ought for some sufficient cause to be dispensed with be examined by interrogatories or before an examiner.

(2) Where it appears to the judge that any party bona fide desires the production of a witness for cross-examination and that the witness can without undue expense be produced, an order shall not be made authorising his evidence to be given by affidavit.

(3) Nothing in any order made under paragraph (1) shall affect the power of the judge at the hearing to refuse to admit evidence tendered in accordance with any such order if in the interests of justice he thinks fit to do so.

#### **Use of affidavit without order**

5. Where a party desires to use at the hearing an affidavit by any witness as to particular facts as to which no order has been made, he may, before the beginning of a period of six days ending on the day of the hearing, give notice, accompanied by a copy of the affidavit, to the party against whom it is to be used, and unless the last mentioned party, before the beginning of a period of three days ending on the day of the hearing, gives notice to the other party that he objects to the use of the affidavit, he shall be taken to have consented to the use thereof and the affidavit may be used at the hearing unless the judge otherwise orders.

#### **Use of affidavits, etc.**

6. Where an affidavit or deposition is used in evidence by or on behalf of a party, the whole affidavit or deposition shall be put in by that party.

#### **Evidence in mitigation of damages for libel or slander**

7. In an action for libel or slander, the defendant shall not, without leave of the judge, give evidence in chief, with a view to mitigation of damages, as to the circumstances in which the libel or slander was published or as to the character of the plaintiff, unless before the beginning of a period of seven days ending on the day of the hearing he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

#### **Notice of conviction, etc.**

8.—(1) Any party to proceedings who intends, in reliance on section 7 or 8 of the Civil Evidence Act (Northern Ireland) 1971(13), to adduce evidence of a conviction, finding of adultery or an adjudication of paternity shall serve on every party to the proceedings notice in Form 118 of such intention with particulars of—

- (a) the conviction, finding or adjudication and the date thereof;
- (b) the court or court-martial which made the conviction, finding or adjudication; and
- (c) the issue in the proceedings to which the conviction, finding or adjudication is relevant.

(2) Where the plaintiff or any party initiating proceedings serves such notice he shall annex it to the civil bill or other process and to any copy served on any other party.

(3) Where a defendant or party other than the plaintiff or a party initiating the proceedings serves such notice, it shall be served within ten days of service of the civil bill or other process upon him.

(4) If a party upon whom notice is served under this Rule—

- (a) denies the conviction, finding or adjudication; or
- (b) alleges that it was erroneous; or
- (c) denies that it is relevant to any issue in the action;

he shall, within ten days of service of the notice, serve a counter-notice in Form 10 on the party by whom the notice was served and on any other party to the proceedings.

(5) Nothing in this Rule shall apply to evidence intended solely to impeach the credit of a party or witness and which is not otherwise relevant to any issue in the proceedings.

### **Witness summons**

**9.—(1)** Subject to paragraph (2), where any party to any action or other proceedings desires a person to be summoned as a witness to give oral evidence at the hearing in court or to produce at the hearing in court a document in his possession or control, a chief clerk for any county court division, or other officer of the court authorised by him for the purpose, shall, on the application of the party, issue a witness summons in Form 110 together with a copy thereof.

(2) Where the chief clerk has reason to believe that any application for a witness summons, not being an application by a party through his solicitor, is frivolous or vexatious, he may refer the application to the judge and the judge may thereupon direct the issue of the summons or otherwise deal with the matter as to him seems just.

(3) The applicant shall, if the chief clerk or such other officer as aforesaid so requests, produce the civil bill or other originating process.

(4) Each original summons shall bear a stamp of the prescribed amount and each such summons and each copy thereof shall be intituled as in the civil bill or other originating process to which it relates and shall contain the name of one witness only but, where the application is made by a party through his solicitor, may as regards the name of the witness be issued in blank.

(5) Unless the judge otherwise directs, the summons shall, a reasonable time before the day fixed for the hearing, be served by the delivery of a copy thereof to the witness personally by—

- (a) a process server for the district in which the witness resides; or
- (b) the solicitor for the party issuing the summons or a solicitor acting as an agent for such solicitor or some person over sixteen years of age employed by either solicitor to serve the document.

(6) Where the summons is to be served by a process server, any money to be paid or tendered under paragraph (7) shall be sent to him together with the summons and the copy thereof.

(7) There shall be paid or tendered to the witness at the time of service of the summons a viaticum consisting of—

- (a) such sum, not being less than five pence, as shall reasonably cover his expenses in travelling to and from court; and
- (b) if the person summoned is not a party to the proceedings, an additional sum of twenty-five pence.

(8) The endorsement of service of a witness summons shall be in Form 111.

### **Order for bringing up prisoner to give evidence**

**10.—(1)** The application for an order under Article 44 of the Order for bringing up before a court any person confined in any prison or place under any sentence or under commitment for trial or otherwise to be examined as a witness in any proceedings pending in a county court may be made at any time to the Office.

(2) The order shall be in Form 112.

### **Notice to admit specific facts**

**11.**—(1) Any party may by notice in Form I 13 call on any one or more than one of the opposite parties to admit, for the purpose of the action only, any specified facts mentioned in the notice.

(2) If the party served with the notice does not admit the facts mentioned in the notice by delivering a written admission thereof in Form 114 within three days after receiving the notice, he shall pay the costs of proving such facts, irrespective of the result of the action or matter, unless the judge otherwise orders.

Provided that—

- (a) any admission made in pursuance of the notice shall be used only for the purposes of the particular action or matter, and shall not be used against the party making it on any other occasion, or in favour of any person other than the party to whom it is made; and
- (b) the judge may for good and sufficient cause and on such terms as to him seem just at any time allow any party to amend or withdraw any admission so made.

### **Notice to admit documents**

**12.**—(1) Where a party desires to adduce any document in evidence, he may, before the beginning of a period of six days ending on the day of the hearing, give notice to any other party who is competent to make admissions requiring him to inspect and admit the document.

(2) The expenses of proving any document shall not be allowed unless such notice has been given, except in cases where, in the opinion of the judge at the hearing, the omission to give notice has not substantially increased the expense.

### **Notice to produce**

**13.** A notice to produce documents may be in Form 115.

### **Evidence of service of notice to admit or produce**

**14.** An affidavit of a party or his solicitor, or some person in the employment of such solicitor, or his solicitor agent of the service of a notice to admit or produce and of the time when it was served, together with a copy of the notice to admit or produce, shall be sufficient evidence of the fact and time of service.

### **Documents produced from proper custody and office copies of judgments and decrees of other courts**

**15.**—(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 judge it appears genuine; and
- (b) no objection is taken thereto;

and, if the admission of any document so produced is objected to, the judge may adjourn the hearing for proof of the document and, if it is proved; the party objecting shall pay the costs occasioned by the objection, unless the judge otherwise orders.

(2) In every proceedings before a county court, an office copy of any judgment, decree or order made by or before any court in Northern Ireland and certified to be a true copy by the proper officer of such court shall be deemed and taken as prima fade evidence of such judgment, decree or order.

### **Evidence of court records**

16. A copy of any entry in a book or other document prescribed for the purpose of keeping a record of or in relation to any proceedings in a county court shall for the purposes of Article 57 of the Order be authenticated by a certificate endorsed on the copy, which copy shall be signed by the chief clerk.

### **Proof of valuation of lands**

17. Without prejudice to any other enactment regarding proof of the valuation of lands, a copy or extract certified by the Commissioner of Valuation or an officer on his behalf to be a true copy of the latest valuation list relating to the hereditament shall, for the purposes of any proceedings in a county court, be sufficient proof of the valuation of such hereditament until the contrary is shown.

### **Proof of handwriting**

18. In any proceedings the judge may, upon such terms as he may think proper, receive in evidence proof of the handwriting of any party or of any subscribing witness to any instrument whatsoever.

### **Practice as to taking evidence**

19. The practice with reference to the examination, cross-examination and re-examination of a witness at the hearing of an action shall extend and be applicable to oral evidence taken in any proceedings at any stage.

### **Order for examination of witnesses out of court**

20.—(1) The judge may, at any stage of any proceedings, make an order for the examination on oath of any person (in this Rule called “the witness”) at any place in Northern Ireland.

(2) The examination may be ordered to take place before—

- (a) any officer of the court making the order; or
- (b) the circuit registrar or chief clerk for the division in which the witness resides or carries on business; or
- (c) in special circumstances such other person as the judge may appoint.

(3) the order may require the attendance of the witness—

- (a) for examination; or
- (b) to produce any document which he could be compelled to produce at the hearing of the proceedings.

(4) The order shall be in form 116 and shall be served on the witness personally a reasonable time before the day fixed for the examination and at the same time there shall be paid or tendered to the witness the sums prescribed by Rule 9(7).

(5) The party on whose application the order was made shall furnish to the person taking the examination (in this Rule called “the examiner”) copies of all documents necessary to inform the examiner of the questions in issue between the parties.

(6) The parties shall be at liberty to attend the examination with or without counsel or solicitors.

(7) The examiner may administer an oath to the witness who may be examined, cross-examined and re-examined as at the hearing of an action.

(8) The deposition shall be taken down in writing—

- (a) by or in the presence of the examiner; and

(b) by question and answer.

(9) The examiner may put any question to the witness as to the meaning of any answer or as to any matter arising in the course of the examination.

(10) The examiner shall not have power to decide upon the materiality or relevancy of any question but, if a question is objected to, he shall take down the question and the answer thereto and make a note of the objection on the deposition.

(11) If the witness objects to any question put to him before an examiner, the question and the objection shall be taken down by the examiner and the validity of the question shall be decided by the judge.

(12) If the witness refuses—

- (a) to attend; or
- (b) to be sworn; or
- (c) to answer any lawful question; or
- (d) to produce any document;

a certificate of such refusal shall be made and signed by the examiner and filed in the Office, and the party requiring the attendance of the witness may apply to the judge for an order directing the witness—

- (i) to attend; or
- (ii) to be sworn; or
- (iii) to answer any question; or
- (iv) to produce any document;

as the case may be, and the judge may thereupon make such order as he thinks fit.

(13) The examiner may, and if need be shall, make a special report to the judge touching the examination and the conduct or absence of the witness, and the judge may thereupon direct such proceedings or make such order as he thinks fit.

(14) When the examination of the witness has been concluded, the deposition shall be read over to the witness and shall be signed by him in the presence of such of the parties or their representatives as may attend, and shall be signed by the examiner and filed in the Office.

(15) If the witness refuses to sign the deposition, the examiner shall make a note of the refusal on the deposition, and the deposition shall be admissible in evidence notwithstanding that it is not signed by the witness.

(16) The deposition shall not be admitted in evidence at the hearing unless—

- (a) the witness is dead or out of Northern Ireland or unable from sickness or other infirmity to attend the court; or
- (b) the parties consent to its being admitted; or
- (c) the judge directs it to be put in;

but, subject as aforesaid, the deposition shall be admissible in evidence, saving all just exceptions, without proof of the signature of the examiner.

(17) Costs, fees and expenses pursuant to an order under this Rule shall be in the discretion of the judge and shall be of such amount and payable by such party as the judge shall determine.

## **Affidavits**

**21.**—(1) Subject to any Rule or Form to the contrary all affidavits shall—

- (a) be expressed in the first person; and

- (b) be drawn up in paragraphs and numbered; and
  - (c) indicate that the deponent is at least sixteen years of age; and
  - (d) be made by some person who has knowledge of the facts, stating—
    - (i) the deponent's residence and occupation; and
    - (ii) what facts are within his own knowledge, and his means of knowledge; and
    - (iii) what facts are deposed to on information derived from other sources and what the sources are.
- (2) Where a party is a corporate body, any affidavit required or authorised by any enactment (including these Orders) to be made by that party may be made by a director, secretary or other officer authorised by the corporate body for that purpose.
- (3) In any affidavit made by two or more deponents the names of all the deponents shall be inserted in the jurat, but if the affidavit of all the deponents is sworn at one time before the same person, it shall be sufficient to state that it is sworn by both or all of the above-named deponents.
- (4) Every affidavit shall be intituled in the action or matter in which it is sworn and a note shall be appended to every affidavit stating on whose behalf it is filed, and the note shall be copied on every office or other copy furnished to a party.
- (5) An affidavit shall not be filed which has been sworn before a person who, when it was sworn, was a party to the proceedings, the solicitor acting for the party on whose behalf it is to be used, or such solicitor's agent, partner or clerk.
- (6) Before any affidavit is used it shall be filed in the Office but in an urgent case the judge may make a decree upon the undertaking of the party to file any affidavit used by him before it is filed, but the decree shall not be issued until the affidavit has been filed.
- (7) Where a party desires to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party the following provisions shall apply—
- (a) he may serve on the opposite party a notice requiring the production of the deponent for cross-examination at the hearing;
  - (b) if the party served with the notice does not produce the deponent at the hearing, he shall not be entitled to use the affidavit as evidence without leave of the judge;
  - (c) a witness summons may be issued on the application of the party served with the notice for the purpose of summoning the deponent to attend for cross-examination.
- (8) Unless the judge otherwise orders, no affidavit shall be filed or used in any proceedings—
- (a) which is blotted so its to obliterate any word; or
  - (b) which is illegibly written; or
  - (c) which is so altered as to be illegible; or
  - (d) which is so imperfect, by reason of having blanks therein or otherwise, that it cannot be easily read or understood; or
  - (e) if there is any interlineation, alteration or erasure in the body of the affidavit or jurat, unless the person before whom the affidavit was sworn has initialled the interlineation or alteration, and in the case of an erasure has re-written and signed in the margin of the affidavit any words or figures written on the erasure.
- (9) Where the chief clerk refuses, under paragraph (8), to file an affidavit he shall give notice in Form 117 to the party presenting the affidavit for filing.
- (10) Where it appears to the person administering the oath that the deponent is illiterate or blind, he shall certify in the jurat that—
- (a) the affidavit was read in his presence to the deponent; and

- (b) the deponent seemed perfectly to understand it; and
- (c) the deponent made his signature or mark in his presence;

and the affidavit shall not be used in evidence without such a certificate, unless the judge is otherwise satisfied that it was read over to and appeared to be perfectly understood by the deponent.

(11) The judge may allow an affidavit to be used in evidence notwithstanding any defect by misdescription of parties or otherwise in the title or jurat or any other irregularity in the form of the affidavit.

(12) An affidavit of service shall state when, where, how and by whom service was effected.

### **Proceedings by or against the Crown**

**22.** In any proceedings by or against the Crown, the judge may, where he thinks it necessary, make an order for the examination upon oath before an officer of the court or before any other person, and at any place, of any witness or person, and may empower any party to the proceedings to give such deposition in evidence therein on such terms (if any) as the judge may direct.

## **PART II**

### **EVIDENCE ADMISSIBLE UNDER PART I OF THE CIVIL EVIDENCE ACT (NORTHERN IRELAND) 1971**

#### **Interpretation and application of this Part**

**23.—**(1) In this Part “the Act of 1971” means the Civil Evidence Act (Northern Ireland) 1971.

(2) This Part shall apply to proceedings referred to arbitration under Article 31 of the Order and to proceedings referred for enquiry and report under Article 32 of the Order as it does to the hearing of any proceedings before the court.

#### **Notice of intention to give in evidence statement under section 1 or 2 of Act**

**24.—**(1) Subject to the provisions of this Rule, a party to proceedings who intends to give in evidence at the hearing any statement which is admissible in evidence by virtue of section 1 or 2 of the Act of 1971 shall, within ten days of service of the civil bill or other process initiating the proceedings, give notice of his intention to the chief clerk and to every other party.

(2) Where, under these Rules or any order or direction of the court, the evidence in any proceedings is to be given by affidavit, then 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.

#### **Statement admissible under section 1 of the Act of 1971: contents of notice**

**25.—**(1) If the statement is admissible under section 1 of the Act of 1971, the notice shall be in Form 120 and there shall be annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and the notice must contain—

- (a) particulars of—
  - (i) the person by whom the record containing the statement was compiled;
  - (ii) the person who originally supplied the information from which the record was compiled; and
  - (iii) any other person through whom that information was supplied to the compiler of that record;



and in the case of any such person as is referred to in sub-paragraph (i) or (iii) above, a description of the duty under which that person was acting when compiling that record or supplying information from which that record was compiled, as the case may be;

- (b) if not apparent on the face of the document annexed to the notice, a description of the nature of the record which, or part of which, contains the statement; and
- (c) particulars of the time, place and circumstances at or in which that record or part was compiled.

(2) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the hearing for any of the reasons specified in Rule 27, the notice must contain a statement to that effect specifying the reason relied on.

### **Statement admissible by virtue of section 2 of the Act of 1971: contents of notice**

**26.**—(1) If the statement is contained in a document produced by a computer and is admissible by virtue of section 2 of the Act of 1971, the notice shall be in Form 121 and there shall be annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and must contain particulars of—

- (a) a person who occupied a responsible position in relation to the management of the relevant activities for the purposes of which the computer was used regularly during the material period to store or process information;
- (b) a person who at the material time occupied such a position in relation to the supply of information to the computer, being information which is reproduced in the statement or information from which the information contained in the statement is derived;
- (c) a person who occupied such a position in relation to the operation of the computer during the material period;

and where there are two or more persons who fall within any of the foregoing sub-paragraphs and some only of those persons are at the date of service of the notice capable of being called as witnesses at the hearing, the person, particulars of whom are to be contained in the notice, must be such one of those persons as is at that date so capable.

(2) The notice must also state whether the computer was operating properly throughout the material period and, if not, whether any respect in which it was not operating properly or was out of operation during any part of that period was such as to affect the production of the document in which the statement is contained or the accuracy of its contents.

(3) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the hearing for any of the reasons specified in Rule 27, the notice must contain a statement to that effect specifying the reason relied on.

### **Reasons for not calling a person as a witness**

**27.** The reasons referred to in Rules 25(2) and 26(3) 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 him, or that he cannot reasonably be expected to have any recollection of the matters relevant to the accuracy or otherwise of the statement to which the notice relates.

### **Counter-notice requiring person to be called as a witness**

**28.**—(1) Subject to paragraphs (2) and (3), any party on whom a notice under Rule 24 is served may, within ten days of service of the notice on him, give to the chief clerk and to the party who

gave the notice a counter-notice in Form 122 requiring that party to call as a witness at the hearing any person (naming him) particulars of whom are contained in the notice.

(2) Where any notice under Rule 24 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 hearing unless he contends that that 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 24 relates is one to which Rule 30 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 30 for directions with respect to the admissibility of that statement.

(4) If any party by whom a notice under Rule 24 is served fails to comply with a counter-notice duly served on him under this Rule, then, unless any of the reasons referred to in Rule 27 applies in relation to the person named in the counter-notice, and without prejudice to the powers of the court under Rule 31, the statement to which the notice under Rule 24 relates shall not be admissible at the hearing as evidence of any fact stated therein by virtue of section 1 or 2 of the Act of 1971, as the case may be.

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

**29.**—(1) Where a question arises whether any of the reasons specified in Rule 27 applies in relation to a person, particulars of whom are contained in a notice under Rule 24, the court may, on the application of any party to the proceedings, determine that question before the hearing in accordance with Order 14 or give directions for it to be determined before the hearing and for the manner in which it is to be determined.

(2) Unless the court otherwise directs, notice in Form 123 of any application under paragraph (1) shall be served on every other party to the proceedings.

(3) Where any such question as is referred to in paragraph (1) has been determined thereunder, no application to have it determined afresh at the hearing of the proceedings 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 time of the disposal of the application under paragraph (1).

#### **Directions with respect to statement made in previous proceedings**

**30.** Where a party has given notice in accordance with Rule 24 that he desires to give in evidence at the hearing a statement falling within section 1(1) of the Act of 1971 which is contained in a record of direct oral evidence given in some other legal proceedings (whether civil or criminal), any party to the proceedings may apply to the court in accordance with Order 14 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 proceedings is to be proved.

#### **Power of the court to allow statement to be given in evidence**

**31.**—(1) Without prejudice to section 1(2)(a) of the Act of 1971 and Rule 30, the court may, if it thinks it just to do so, allow a statement falling within section 1(1) or 2(1) of the Act of 1971 to be given in evidence at the hearing of the proceedings notwithstanding that—

- (a) the statement is one to which Rule 24(1) applies and that the party desiring to give the statement in evidence has failed to comply with that Rule; or
- (b) 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 28.

(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 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 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 supplier of information, etc.**

**32.** Where—

- (a) a notice given under Rule 24 relates to a statement which is admissible by virtue of section 1 of the Act of 1971; and
- (b) the person who originally supplied the information from which the record containing the statement was compiled, is not called as a witness at the hearing of the proceedings; and
- (c) none of the reasons mentioned in Rule 27 applies so as to prevent the party who gave the notice from calling that person a witness;

no other party to the proceedings 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 4 of the Act of 1971 unless he gave a counter-notice under Rule 28 in respect of that person or applied under Rule 30 for a direction that that person be called as a witness at the hearing of the proceedings.

### **Notice required of intention to give evidence of certain inconsistent statements**

**33.**—(1) Where a person, particulars of whom were contained in a notice given under Rule 24, is not to be called as a witness at the 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 4(1)(b) of the Act of 1971 shall, within ten days after service of that notice upon him, give notice of his intention to do so in Form 124 to the chief clerk and to the party who gave the notice under Rule 24.

(2) If the statement was made otherwise than in a document, the notice must contain particulars of—

- (a) the time, place and circumstances at or in which the statement was made;
- (b) the person by whom, and the person to whom, the statement was made; and
- (c) the substance of the statement or, if material, the words used.

(3) If the statement was made in a document, a copy of the document, or of the relevant part thereof, must be annexed to the notice and the notice must contain such (if any) of the particulars mentioned in paragraph 2(a) and (b) as are not apparent on the face of the document or part.

(4) The court may, if it thinks it just to do so, allow a party to give in evidence at the hearing of proceedings any evidence which is admissible for the purpose mentioned in the said section 4(1)(b) notwithstanding that that party has failed to comply with paragraph (1).

### **Counter-notice**

**34.** Where—

- (a) a party to proceedings serves a counter-notice under Rule 28 in respect of any person who is called as a witness at the hearing of the proceedings 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 the court may determine the amount of any costs occasioned by reason of the service of the counter-notice on any other party, or direct that they shall be determined, and order that such amount be paid to that other party by the party who served the counter-notice.

## ORDER 25

### Hearing and re-hearing

#### PART I

#### HEARING BY JUDGE

##### **General**

1. At the hearing of any action or other proceeding the judge may hear the whole matter of the action or proceeding and give a decree thereon or grant any relief, redress, or remedy or make any order or give any direction he considers necessary to enable him to give a final decree on a day to which the hearing is adjourned.

##### **Where proper parties are not before the court**

2. Where at the hearing it appears to the judge that there are any claims, estates, titles, rights, duties or liabilities upon which he cannot adjudicate by reason of all the proper parties not being before the court, he may order such parties to be made plaintiffs or defendants upon such terms as to adjournment, notices and costs as he thinks fit.

##### **Where plaintiff does not appear or does not prove his claim**

3.—(1) If a plaintiff does not proceed with his civil bill or does not appear at the hearing of an action or other proceeding, the action or other proceeding may be struck out or dismissed without prejudice to the plaintiffs proceeding by a new civil bill or other originating process.

(2) Where a plaintiff appears at the hearing of an action or other proceeding but fails to establish his case to the satisfaction of the judge, the judge may dismiss the action or other proceeding either without prejudice to the plaintiffs proceeding by a new civil bill or other originating process or on the merits as he thinks just.

(3) Where an action or other proceeding has been dismissed without prejudice and a subsequent action or other proceeding for the same or substantially the same cause of action is brought before payment of any costs payable under the dismissal, the judge may stay the subsequent action or other proceeding until such costs have been paid.

##### **Decree where defendant does not appear**

4.—(1) If the defendant (not being the Crown) does not appear, the judge, upon proof of service and of facts entitling the plaintiff to relief, may, subject to paragraphs (2) to (4), give such decree or make such order as he considers just, and an endorsement of service or an affidavit of service or, where Order 6 Rule 3(2)(b) or Rule 3(7) applies the solicitor's certificate referred to in Rule 12 of Order 6 may be accepted as proof of service.

(2) If the Crown does not appear on the hearing of any civil bill in which it is a defendant, the civil bill shall be adjourned to a date fixed by the judge, on such terms as to him may seem just.

(3) Notice of the date fixed shall be served upon the Crown in a manner to be directed by the judge, and shall set out that the case will be heard on the date named and such decree given or other order made as to the judge may seem just, the Crown's absence notwithstanding.

(4) If the Crown does not appear on the adjourned hearing the judge may, upon proof of service of such notice, proceed to hear and determine the case and may give such judgment or make such other order as to him may seem just.

**If proceedings discontinued, etc., counterclaim may proceed**

5. Where the defendant sets up a counterclaim and the claim of the plaintiff is discontinued, struck out, stayed or dismissed, the counterclaim may be proceeded with and the defendant, on proof thereof, may have a decree.

**Non-appearance on a counterclaim**

6. If a person, not originally a party to the proceedings, who has been served with a counterclaim does not appear at the hearing, the judge may proceed with the hearing and may give such decree or make such order as may be just against the person so served, or may adjourn the hearing and give such directions as he thinks fit.

**Exclusion of counterclaim**

7. Where the judge is of opinion that a counterclaim would be better disposed of in independent proceedings, the judge may of his own motion or on the application of any party order the counterclaim to be excluded.

**Decree where counterclaim is established**

8.—(1) Where a counterclaim is established against the claim of the plaintiff and there is a balance in favour of one of the parties the judge may grant a decree in Form 139; but such a decree shall not be made in a case where Order 21 Rule 4(1)(a) applies.

(2) Subject to Order 21 Rule 4(1)(a), nothing in paragraph (1) shall affect the discretion of the judge to award costs in such proportions as he thinks fit.

**Misjoinder of plaintiff not to defeat counterclaim**

9. Where any person has been improperly or unnecessarily joined as a plaintiff, a defendant who has set up a counterclaim may proceed with the counterclaim against the other plaintiff.

**Vexatious or irrelevant question**

10. The judge may disallow any question put in cross-examination to any party or witness which appears to the judge to be vexatious or irrelevant.

**Decision of questions without general order for execution of trusts, etc.**

11. It shall not be obligatory on the judge in any proceedings—

- (a) for the administration of the estate of a deceased person; or
- (b) for the execution of a trust;

to give a decree or make an order for the general administration of the estate or execution of the trust, if the questions between the parties can be properly determined without such decree or order.

**Injunctions**

12.—(1) In any proceedings in which an injunction has been or might have been claimed, a plaintiff may, before or after decree, apply for an injunction to restrain the defendant from—

- (a) the repetition or continuance of the wrongful act or breach of contract complained of, or
- (b) the commission of any wrongful act or breach of contract of a like kind, relating to the same property or right or arising out of the same contract;

and the judge, in addition to giving a decree for such damages and costs as the plaintiff may be entitled to, may grant the injunction on such terms as may be just.

- (2) An application under this Rule may be made—
  - (a) before the hearing of the action or matter in accordance with Order 14 Rule 6; or
  - (b) at or immediately after the hearing, in which case the order shall be included in the decree; or
  - (c) after decree, on notice and supported by affidavit.

### **Inspection by judge**

**13.** The judge may inspect any property or thing concerning which any question may arise in any proceedings.

## **PART II**

### **HEARING BY CIRCUIT REGISTRAR**

#### **General**

**14.** In the hearing of any action to which this Part applies, the circuit registrar shall have and may exercise all the powers vested in the judge other than committal for contempt or default.

#### **Proceedings to be heard by the circuit registrar**

**15.—(1)** Subject to Part III of Order 12 and to Order 26 the circuit registrar shall hear and determine any action in which the amount claimed, or the value of specific chattels claimed, does not exceed £500 save and except proceedings (in these Rules referred to as 'excepted proceedings')—

- (a) in which damages are claimed for libel or slander; or
- (b) brought under Article 11 of the Order; or
- (c) in which the title to any land comes into question; or
- (d) brought under section 17 of the Married Women's Property Act 1882; or
- (e) remitted by the High Court.

(2) The circuit registrar shall hear and determine any action (other than a summary action under Part III or Order 12 but including a default action under Part II of Order 12) in which no defence is entered in accordance with the provisions of Rule 4 of Order 8 and the defendant—

- (i) fails to appear at the hearing; or
- (ii) appears at the hearing (whether personally or by a solicitor) for the purpose only of requesting that time be allowed for payment; or
- (iii) appears and consents to the jurisdiction of the circuit registrar.

(3) Any action listed for hearing by the circuit registrar in which no defence is entered in accordance with the provisions of Rule 4 of Order 8, where the defendant appears at the hearing to dispute the claim and where the claim exceeds £500 or is the subject of excepted proceedings shall be transferred by the circuit registrar for hearing by the judge.

(4) Any action listed for hearing by the judge in which the defendant fails to appear at the hearing may be directed by the judge to be heard by the circuit registrar.

### **Hearing by circuit registrar**

16. Any action intended for hearing by the circuit registrar shall, subject to the provisions of Order 26, be heard and determined in like manner as actions are heard and determined by the judge.

17. Where by reason of death or unavoidable absence the circuit registrar is not present at the hearing of any action to which this Part applies the chief clerk or other officer of the court present shall open and adjourn or as the case may be, adjourn the hearing to such day as he thinks convenient.

### **Decree where defendant does not appear**

18.—(1) If the defendant (not being the Crown) does not appear, the circuit registrar, upon proof of service and of facts entitling the plaintiff to relief, may, subject to paragraphs (2) to (4), give such decree or make such order as he considers just.

(2) If the Crown does not appear on the hearing of any civil bill in which it is a defendant, the civil bill shall be adjourned to a date fixed by the circuit registrar, on such terms as to him may seem just.

(3) Notice of the date fixed shall be served upon the Crown in a manner to be directed by the circuit registrar and shall set out that the case will be heard on the date named and such decree given or order made as may seem just, the Crown's absence notwithstanding.

(4) If the Crown does not appear on the adjourned hearing the circuit registrar may, upon proof of service of such notice, proceed to hear and determine the case and may give such judgment or make such other order as to him may seem just.

### **Records, costs and court fees**

19. Subject to Order 26 proceedings heard before the circuit registrar shall for all purposes; including records, costs and court fees, be treated in like manner as if they had been heard before the Judge, save that as regards costs, Rule 19(1)(a) of Order 55 shall not apply.

## **PART III**

### **SETTING ASIDE JUDGMENTS AND ORDERS**

#### **New hearing and re-hearing**

20.—(1) Where in any case it is shown to the satisfaction of the judge that a decree has been obtained by fraud, misrepresentation, surprise, mistake or other irregularity, or because the civil bill or other initiating process did not come to the knowledge of the defendant in time, the person against whom the decree was obtained (in this Rule referred to as “the unsuccessful party”) may in accordance with this Rule apply for and obtain a hearing or re-hearing.

(2) An application for a hearing or re-hearing under this Rule shall, subject to paragraph (3), be made by motion to a court in the division in which the decree was obtained; notice of such motion shall be lodged in the Office and shall be served on the solicitor for the party in whose favour the decree was obtained (in this Rule referred to as “the successful party”) or, where that party has sued in person, on that party within ten days from the day on which the unsuccessful party or his solicitor has notice of the decree or within such further time as the judge may consider reasonable.

(3) Where the notice alleges that the unsuccessful party did not have knowledge of the initiating process or that the process which was sought to be served by post in accordance with the provisions of Order 6 did not come to his knowledge in time to defend the action or to appeal in the matter, then if the chief clerk is satisfied that the successful party consents to a hearing or re-hearing of the case, he may grant the application without the motion being made to the court and in so doing, unless the parties are agreed as to incidence and amount of the costs in the application, may make such order as to costs as he thinks fit.

(4) The notice shall be signed by the unsuccessful party or his solicitor and shall state the grounds upon which the hearing or re-hearing is sought and the nature of the fraud, misrepresentation, surprise, mistake or other irregularity relied upon and the motion shall be moved on the first convenient day after the end of a period of four days from the date of the service of the notice on the successful party or his solicitor.

(5) Except where the judge otherwise directs, the Service of the notice shall not operate as a stay of execution in the action unless the unsuccessful party lodges in the Office, together with a copy of the notice of motion, the amount for which the decree was made with costs.

(6) If it comes to the notice of the chief clerk that a decree may have been obtained by fraud, misrepresentation, surprise, mistake or other irregularity, he may bring the suspected irregularity to the attention of the judge and the judge may give such directions or make such further order as he considers just including an order for a hearing or re-hearing of the action.

(7) Upon any hearing or re-hearing under paragraph (1), (3) or (6) such order may be made (whether by way of affirmance, variation or rescission) subject to such conditions as the judge thinks proper and on any such hearing or re-hearing the costs shall be in the discretion of the judge.

(8) Paragraphs (2) to (5) shall apply *mutatis mutandis* to the parties to a counterclaim.

## ORDER 26

### Arbitration under Article 30

#### Interpretation

1. In this Order “arbitration” means arbitration under Article 30 of the Order and nor under Article 31 of the Order nor Order 20.

#### Proceedings to which this Order applies

2. Subject to Rule 4 any action in which the amount claimed, or the value of specific chattels claimed, does not exceed £200 shall be known as a small claim and shall be commenced and heard in accordance with the provisions of this Order.

#### Commencement of proceedings under Article 30

3. A small claim shall be commenced by an application for arbitration in accordance with Form 125.

#### Proceedings to which this Order does not apply

- 4.—(1) No application for arbitration under this Order shall be made in respect of any claim—
- (a) for damages for personal injuries;
  - (b) made in excepted proceedings within the meaning of Order 25 Rule 15(1).

(2) The provisions of this Order shall not apply to default actions and summary actions under Order 12, except where the amount claimed or the value of the specific chattels claimed does not exceed £200 and the defendant serves notice, in accordance with Order 12, Rule 3 or 9, that he disputes liability or intends to make a counterclaim against the plaintiff and requests the chief clerk to treat the notice to him as an application under Rule 3, in which event the claim and counterclaim shall be dealt with under the provisions of this Order.



### **Where proceeding; may be heard**

5. A small claim may be heard—

- (a) in a court within the division in which the applicant or one of the applicants resides or carries on business; or
- (b) in a court within the division in which the respondent or one of the respondents resides or carries on business.

### **Application of the Arbitration Act (Northern Ireland) 1937**

6.—(1) Subject to the modifications set out in paragraphs (2) to (5) the following provisions of the Arbitration Act (Northern Ireland) 1937(14) shall apply to arbitrations under this Order, that is to say:—

Sections 7(2), 13, 19(1) and 22 and paragraphs 4, 5, 6, 7 and 8 of the First Schedule to that Act.

(2) The strict rules of evidence shall not apply in relation to the arbitration, and the circuit registrar may adopt any method of procedure which he may consider to be convenient and to afford a fair and equal opportunity to each party to present his case. Without prejudice to the generality of the foregoing, the circuit registrar, with the consent of the parties, may decide the case on the basis of statements and documents submitted by the parties.

(3) Any arbitration hearing shall be informal and may be held in private.

(4) Any party to the proceedings who desires a person to be summoned as a witness at the hearing may apply to the court in which the proceedings are to be heard for a witness summons and the provisions of Order 24 Rule 9 shall apply, but the summons may be served not merely as specified in Rule 9(5) of that Order but also by the delivery of a copy thereof to the witness personally by the party issuing the summons.

(5) At any time before giving his decision and either before or after the hearing, the circuit registrar may, at the request of any party or of his own volition, inspect any property or thing concerning which any question may arise or consult any expert or call for an expert report on any matter in dispute or invite an expert to attend the hearing as assessors.

(6) If any party does not appear at the arbitration, the circuit registrar may make an award on hearing any other party to the proceedings who may be present.

### **Issue of application**

7.—(1) The application for arbitration and 3 copies thereof shall be delivered to a court office where, upon payment of the prescribed fee for issue being made by or on behalf of the applicant, a designated officer shall issue the same by endorsing on the application and on all the copies a notice in Form 126 and (subject to paragraph (2)) shall file the application with one copy and return to the applicant one of the endorsed copies and cause another endorsed copy to be served on the respondent by means of the recorded delivery service.

(2) Where the court office at which the application is issued is an office other than the designated office for the division (hereinafter in this Rule referred to as “the designated office”) in which, in accordance with Rule 5, the hearing is to take place, the issuing office shall transmit the application to the designated office and shall retain the third copy.

(3) The office at which the application is issued shall cause a record of issue and of such service to be kept in a recorded delivery postage book and, if Other than the designated office, shall transmit to the designated office a copy of such record certified by the designated officer and this copy or the entry in the recorded delivery postage book shall be accepted as evidence of such service.

(4) If, on the expiration of 14 days from the service of the copy of the application and notice, the designated office has not received notice from the respondent that he intends to appear before the circuit registrar on the date fixed in the notice to dispute his liability for the claim in whole or in part or to allege a counterclaim the office shall refer the application to the circuit registrar as an undisputed application and the circuit registrar may, if he thinks fit, decide the case on the basis of the application and the circuit registrar may, if he thinks fit, decide the case on the basis of the application submitted and make, such award as he thinks proper or require the applicant to attend before him on the date fixed.

(5) If the designated office receives notice from the respondent that he disputes his liability for the claim Or relies upon a counterclaim, the designated officer shall send a copy of such notice to the applicant.

### **Award**

8.—(1) The parties to the arbitration shall be notified of any award made by the circuit registrar, which award shall be drawn up by the registrar in form of a certificate signed by him and entered in a book kept for that purpose.

(2) Subject to paragraph 7 of the First Schedule to the Arbitration Act (Northern Ireland) 1937, any award made by the circuit registrar under this Order shall have the like effect as a decree pronounced by the judge.

### **Costs**

9. No costs or witness expenses shall be awarded in respect of proceedings brought under this Order.

Provided that, where the circuit registrar is satisfied that—

- (a) there has been misconduct by one of the parties, he may award costs or witness expenses against that party; or
- (b) the proceedings were properly commenced under Order 12, he may award such costs, not exceeding the scale of costs specified in Table 3 in Part I of Appendix 2, as he considers just in the circumstances.

### **Interpretation**

10. In this Order “designated” means designated by the Lord Chancellor.

## **ORDER 27**

### **Proceedings under the Hire-Purchase Act (Northern Ireland) 1966**

#### **Interpretation**

1. In this Order the expression “the Act of 1966” means the Hire-Purchase Act (Northern Ireland) 1966 and the expression “agreement” means, except in its application to conditional sale agreements as provided by Rule 8, a hire-purchase agreement.

#### **Where proceedings may be commenced**

2. Where in any case to which section 34 of the Act of 1966 applies there are two or more hirers the action may be commenced in the court for the division in which any one of the hirers—

- (a) resides or carries on business; or
- (b) resided or carried on business at the date on which the last payment was made under the agreement.

### **Particulars of claim**

3. A civil bill commencing an action for the recovery of possession of goods let under an agreement shall contain the following particulars—

- (a) the date of the agreement, and the parties thereto;
- (b) the goods claimed;
- (c) the amount of the hire-purchase price;
- (d) the cash price;
- (e) the amount paid by or on behalf of the hirer;
- (f) the amount of the unpaid balance of the hire-purchase price;
- (g) the date when the right to demand delivery of the goods accrued;
- (h) the amount (if any) claimed as an alternative to the delivery of the goods; and
- (i) the amounts (if any) claimed in addition to the delivery of the goods or to any claim under sub-paragraph (h), stating the cause of action in respect of which each such claim is made.

### **Applications**

4.—(1) An application under section 35(3) of the Act of 1966 may, where the exigencies of the case so require, be made *ex parte*, upon lodgment by the applicant in the Office of a requisition setting forth the nature of the application.

(2) Every other application under the Act of 1966 shall be by motion on notice in Form 127.

### **Issue of decree after postponement order**

5.—(1) Where the operation of an order for the specific delivery of goods is postponed the decree shall not issue until an affidavit has been lodged in the Office stating that—

- (a) a condition of the postponement has not been fulfilled; or
- (b) the conditions of the postponement have been fulfilled but the defendant has made default in the payment of the costs awarded by the decree and stating also the total sum paid by the defendant and what is claimed to be still outstanding on foot of the decree and whether or not the goods or any part thereof have or has been recovered.

(2) Before issuing such a decree the chief clerk shall record thereon a certificate embodying the purport of such affidavit in order to show what is claimed to be still outstanding on foot of the decree.

### **Forms**

6. Forms 127 to 131 may be used for proceedings under the Act of 1966 and this Order.

### **Application of Order to conditional sale agreements and saving for other Rules etc.**

7.—(1) The provisions of this "Order and Forms 127 to 131 shall apply to the conditional sale agreements as they apply to hire-purchase agreements and shall have effect in relation to such first-mentioned agreements subject to the following modifications, that is to say—

- (a) for any reference to the hirer there shall be substituted a reference to the buyer;

- (b) for any reference to the owner there shall be substituted a reference to the seller;
- (c) for any reference to the hire-purchase price there shall be substituted a reference to the total purchase price; and
- (d) for any reference to a hire-purchase agreement or to goods let under the agreement, there shall be substituted a reference to the conditional sale agreement, or to goods agreed to be sold under the agreement, as the case may be.

(2) Except as provided by this Order, the other provisions of these Rules, or of any other County Court Rules, and the practice for the time being in force, shall, so far as they would ordinarily be applicable, apply to proceedings under the Act of 1966.

## ORDER 28

### Payment into court by trustees

#### **Payment into court by trustees**

1.—(1) Where a person desires to pay money or securities into court under section 63 of the Trustee Act (Northern Ireland) 1958(15) he shall file in the Office an affidavit in Form 132 containing the information required thereby and shall pay the money or securities into court in accordance with Court Funds Rules.

(2) The costs incurred in the payment into court may be retained by the person making the payment into court.

(3) The chief clerk may require in addition to the affidavit such evidence as he thinks proper with regard to the matter in respect of which the payment is made into court.

(4) As soon as he receives it the chief clerk shall endorse on the affidavit a memorandum of the day on which it is filed and the affidavit shall be taken for all purposes to have been duly filed on the day so endorsed on it.

(5) On the filing of the affidavit, the chief clerk shall enter the matter in the books of the court, and shall send to each person mentioned in paragraph 4 of the affidavit at the address given therein a notice of the payment into court in Form 133.

(6) The persons filing the affidavit or any of them may apply to the chief clerk for a certificate in Form 134.

#### **Application for payment out, etc.**

2. Where a person desires to apply to the court for the investment or payment out of court of any money or securities paid into court under this Order, the following provisions shall apply—

- (a) the application shall be made to the judge *ex parte*;
- (b) the judge on the hearing of the *ex parte* application may require notice of the application to be served on such persons as he thinks fit, and fix a day for the further hearing;
- (c) evidence in support of the application may be given by affidavit or in such other manner as the judge may direct.

## ORDER 29

### Proceedings under Married Women's Property Act 1882

1.—(1) Where application is made under section 17 of the Married Women's Property Act 1882<sup>(16)</sup> particulars of the question to be submitted to the decision of the judge shall be filed in the Office and thereupon a summons shall be issued in Form 135 and shall be served together with a copy of the particulars before the beginning of a period of 28 days ending on the entry day.

(2) All proceedings subsequent to the issue of the summons shall be had as if the proceeding had been commenced by an equity civil bill.

2. The judge shall direct what costs are to be allowed.

## ORDER 30

### Consumer Credit Act 1974

1.—(1) An application under section 139(1)(a) of the Consumer Credit Act 1974<sup>(17)</sup> (in this Order referred to as “the Act”) for the purpose of re-opening a credit agreement on the ground that it is extortionate shall be made by notice in Form 136.

(2) The applicant shall serve the notice of the application on the other party or parties to the agreement (who shall be the respondent or respondents to an application) and a copy of the notice on the chief clerk not less than twenty-eight days before the entry day for the sitting at which the application is to be heard.

(3) Upon receipt of the copy of the notice the chief clerk shall enter the application for hearing at the appropriate sitting of the court for the hearing of ordinary civil bills without the need for production of an entry sheet.

(4) The application shall be made to the court for the county division in which the applicant resides or, where he is not resident in Northern Ireland, for the county court division in which the respondent or one of the respondents resides.

2.—(1) Where in proceedings by ordinary civil bill, being proceedings such as are specified in section 139(1)(b) of the Act, a defendant desires to have a credit agreement re-opened he shall before entry day serve notice that he so desires on the chief clerk and on the plaintiffs solicitor or, where the plaintiff is suing in person, on the plaintiff.

(2) Paragraph (1) shall not apply where notice has been served under rule 17 of Order 12 and the action has been entered for hearing in accordance with that rule.

## ORDER 31

### Proceedings under the Matrimonial Causes (Northern Ireland) Order 1978

1. Where application is made under Articles 35, 38 or 40 of the Matrimonial Causes (Northern Ireland) Order 1978, particulars of the question to be submitted to the decision of the judge shall be filed in the Office and thereupon a summons shall be issued in the form specified in Form 137 and shall be served together with a copy of the particulars before the beginning of a period of 28 days ending on the entry day.

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<sup>(16)</sup> 1882 c. 75

<sup>(17)</sup> 1974 c. 39

2. The Judge shall direct what costs are to be allowed.

## ORDER 32

### Statutory appeals, references, applications and cases stated

#### PART I

#### STATUTORY APPEALS, REFERENCES AND APPLICATIONS

##### Appeals

1.—(1) This Rule shall apply, with any necessary modifications and subject to the provisions of the relevant enactment, to any appeal not otherwise provided for which under any enactment for the time being in force may lie to a county court against any order, determination, award or other decision of a tribunal (in this Order referred to as an “order”).

(2) Every such appeal (in this Order referred to as an “appeal”) shall be by way of re-hearing and where any question of fact is involved in an appeal, the evidence bearing on such question shall be given orally unless the judge, as respects that evidence or any part thereof, otherwise directs.

(3) Every appeal shall be brought by notice of appeal intitled in the matter of the relevant enactment and as between the parties to the appeal, and shall set forth the grounds upon which the appellan relies.

(4) Every such notice of appeal shall be served—

- (a) within the time provided by the relevant enactment and if no time is so provided then within twenty-one days from the date on which the order was made or within such further period as the judge, having regard to all the circumstances, may in his discretion allow;
- (b) upon every body or person making, or affected by, the order; and
- (c) subject to any directions of the judge in like manner as a civil bill is served.

(5) Every appeal shall be entered in the Office by the appellant who shall send by prepaid post to, or leave at, the Office—

- (a) a true copy or notice of the order if in his possession; and
- (b) a true copy of the notice of appeal and endorsement of each service thereof;

so as to be received in the Office not later than entry day.

(6) Every appeal shall be to the equity sittings held next after the expiration of a period of fifteen days from the day on which notice of appeal is served.

(7) An appellant may by his notice appeal against the whole or any part of the order and the notice shall state whether the whole or part only, and if part only which part, of the order is impugned.

(8) Upon the entry of an appeal the chief clerk may require the secretary, registrar or other proper officer of the tribunal to furnish to the Office a copy of the order.

(9) The chief clerk may make and issue to any party, or any person interested, a copy of the order.

(10) Subject to the provisions of paragraphs (5) and (7) of Article 8 of the Order, every appeal shall be heard in the court for the division—

- (a) in which any land, property or business affected by the order is wholly or mainly situate or carried on; or
- (b) in which the order was made.

(11) Subject to the provisions of this Rule, the judge shall, in relation to an appeal, have the like powers and authorities as he has in the exercise of the jurisdiction of the court in equity matters.

(12) Subject to the provisions of the relevant enactment and of this Rule, the procedure, rules and practice for the time being in force in county courts with respect to equity proceedings shall apply to every appeal.

### **References**

2. Rule 1 shall with any necessary modifications apply to any matter or proceeding not otherwise provided for where under any enactment for the time being in force any matter, question or issue whether of law or of fact may be submitted or referred to a county court for its opinion or decision.

### **Applications**

3. Any application (other than an application by way of appeal or reference) under the provisions of any enactment for the time being in force, not otherwise provided for, may be brought either in the manner in which similar or analogous applications are brought in the county court or in the manner (subject to any necessary modifications) in which appeals may be brought under this Order.

## **PART II**

### **CASES STATED**

#### **Application of this Part**

4. This Part shall apply, subject to the provisions of the relevant enactment and of the Rules of the Supreme Court, to any case stated which, under the provisions of any enactment for the time being in force, may be stated for the opinion of the Court of Appeal.

#### **Stating of case**

5.—(1) The judge may state a case on the application of any party.

(2) An application for a case stated shall be made in the manner and within the time provided by the relevant statute, and if not so provided, then such an application shall be made in writing by delivering it to the chief clerk within a period of fourteen days commencing on the date on which the decision was given and a copy shall be given to the other party.

(3) The written application shall set out the precise point of law involved in the decision with which the applicant is dissatisfied.

(4) Subject to any directions of the judge in special circumstances, a case stated shall be prepared by the party applying for it and shall be submitted in draft form to the other party or parties for approval within one month from the day on which the judge directs the case to be stated.

(5) The party to whom the draft case is submitted shall within three weeks from the day on which it is submitted to him return it with his observations thereon to the party who prepared it.

(6) Every case stated shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and refer to such documents as may be necessary to enable the Court of Appeal to decide any question raised thereby.

#### **Submission and transmission of case**

6.—(1) The party or parties preparing a case stated shall, within two months from the day on which the judge directs the case to be stated or such longer time as the judge may allow, submit it to the judge for approval and settlement.

(2) Any dispute between the parties as to the contents of the case stated shall be determined by the judge.

(3) The judge shall within two months from receipt of a case stated approve and settle the case and shall—

- (a) sign it and insert the date of such signature;
- (b) where more than one party applies for a case stated, direct which applicant is to have carriage; and
- (c) transmit the case to the chief clerk.

(4) Subject to paragraph (2), the chief clerk on receiving the signed case stated shall—

- (a) endorse thereon the date of receipt; and
- (b) transmit to the applicant a signed case with the date of transmission also endorsed.

(5) Where any enactment or any order of the judge requires a party having carriage of a case stated to fulfil any condition precedent (whether by way of giving security for costs, or of entering into a recognizance for the due prosecution of the case, or otherwise) to the entry of the case stated in the Supreme Court, the chief clerk shall not transmit the case to the applicant until that condition has been fulfilled.

(6) Where any such condition precedent is not fulfilled, or the party preparing the draft case does not submit it to the judge for approval and settlement, within the time fixed by the enactment or by these Rules or such longer time as the judge may allow, the application shall be deemed to be withdrawn and thereupon, if the case was stated—

- (a) after the determination of the proceedings, that determination shall stand affirmed;
- (b) before the determination of the proceedings, the proceedings shall stand adjourned until the next succeeding sittings or, with the consent of the parties, to the sittings for such other division as may be convenient.

(7) Where the party to whom a draft case stated has been submitted under Rule 5(5) makes default in complying with that Rule, the party having carriage may proceed in accordance with paragraph (1).

### PART III

#### INTERPRETATION

##### **Interpretation**

7. In this Order the expression—

“enactment” means an Act or statutory instrument or any provision of an Act or statutory instrument;

“Supreme Court” includes any division or judge of that Court;

“tribunal” means any court, authority, body or person making the order.

## ORDER 33

### Decrees

##### **Record of decrees**

1. The chief clerk shall enter in the books of the court a minute of every decree made by the court.



### **Interest amount awarded by decree**

2. Subject to Article 127 of the Judgement Enforcement (Northern Ireland) Order 1981 the amount awarded by decree (not being a penal sum for securing principal and interest) including any interest and costs thereby awarded shall, subject to any direction by the judge, carry interest at the rate of 15 per centum per annum from the date on which the decree was made.

### **Recovery of value added tax**

3.—(1) Subject to paragraph (2), in a decree there shall be added after the words "witnesses' expenses" the words "and, in addition, any sum for value added tax recoverable by the plaintiff [or (in the case of a dismissal) defendant]".

(2) Paragraph (1) shall not apply to a summary or default decree or a decree in undefended or in equity proceedings or where value added tax is not recoverable by the successful party under Rule 4 of Order 55.

(3) Before serving notice of intent under the Judgment Enforcement Rules (Northern Ireland) 1981 to enforce a decree which orders the recovery of value added tax as provided for in Rule 4 of Order 55, the party in whose favour the decree was given shall forward the decree together with a certificate in Form 153 to the Office and the chief clerk shall endorse on the decree a statement to the effect that value added tax in the appropriate amount has been certified.

### **Lodgment of decree**

4.—(1) It shall be; the duty of the party in whose favour any order is made by the judge to forward the appropriate form of decree to the Office for signing and sealing; and, in the event of an appeal, such form of decree shall be lodged a reasonable time before the hearing.

(2) Where the court makes an attachment of earnings order or an order under Article 107 of the Judgments Enforcement (Northern Ireland) Order 1981 or stays enforcement of any decree or order on the ground of the debtor's inability to pay, the party in whose favour such order or decree is made shall, in addition to complying with paragraph (1), at the same time forward a copy thereof to the Office.

(3) The chief clerk shall, after comparing the form of order or decree referred to in paragraph (1) with the copy forwarded under paragraph (2), certify such copy before transmitting it to the Enforcement of Judgments Office in accordance with Article 116 of the said Order of 1981.

### **Amounts for which decree issued to be in decimal currency**

5. A decree for the payment of a sum of money must state the sum in decimal currency.

### **Issue of decree**

6.—(1) Unless by special order of the judge no decree shall issue until the time for appeal or the time for making an application for case stated (whichever period is the longer) has expired. An application to the judge for expedited issue of a decree may be made *ex parte* in accordance with Order 14.

(2) For the purpose of enabling all parties in whose favour a decree is given, either wholly or in part to secure execution thereon, the chief clerk may issue to the parties so entitled such number of decrees as may appear to him requisite to implement the orders of the court; and where more than one decree is or is to be issued there shall be endorsed on the face of every decree issued the words "Issued to enable A.B. to obtain the relief provided for him herein".

### **Decrees for debt or damages**

7.—(1) A decree for debt or damages (not being a decree in a default or summary action) shall be in Form 138.

(2) A decree where a counterclaim has been established shall be in Form 139.

(3) A decree for debt or damages in favour of a minor shall be in Form 140 and an order appointing a guardian to a minor and approving settlement of claims shall be in Form 141.

(4) A dismiss of a civil bill for debt or damages shall be in Form 142.

### **Decrees for recovery of land**

8.—(1) A decree for the recovery of land shall be in Form 143 or Form 144 as appropriate.

(2) A dismiss of a civil bill claiming recovery of land shall be in Form 145.

### **Stay of execution of decrees in ejectment**

9. In all cases of decrees in ejectment, the judge may grant such stay of execution as he considers reasonable in the circumstances.

### **Stay of execution and removal thereof**

10.—(1) The chief clerk shall endorse or cause to be endorsed on a decree the terms of any stay of execution granted by the court.

(2) A decree shall not issue until such stay be removed.

(3) A party seeking to remove a stay of execution upon default in complying with such terms shall lodge in the Office an affidavit setting out particulars of the default.

(4) Where such default is in the payment of a sum by instalments or some or one of them, the affidavit shall set out particulars of and the amounts of the several instalments (if any) which have been paid and particulars of the default including the amount then due on foot of the decree.

(5) The chief clerk shall, before issuing a decree, write and sign or cause to be written and signed on the face of the decree a statement that the stay of execution has been removed.

(6) Where the decree is such as is referred to in paragraph (4), the statement shall specify the total amount of the instalments (if any) paid to the date of the affidavit lodged under paragraph (3) and the decree shall issue for the whole amount remaining due on foot of the decree after deducting such instalments (if any) as have been paid thereunder as shown in the said affidavit but with the addition to the costs therein stated of a sum of £1.50 as the costs and outlay of the said affidavit.

### **Decree for balance of rent and costs under section 61 of the Landlord and Tenant Law Amendment Act, Ireland, 1860**

11. A decree for the balance of rent and costs under section 61 of the Landlord and Tenant Law Amendment Act, Ireland 1860(18) shall be in Form 146.

### **Decree for payment of legacy or a distributive portion of the assets of an intestate**

12. A decree for payment of a legacy shall be in Form 147 and a decree for payment of a distributive portion of the assets of an intestate shall be in Form 148.

### **Decrees in action of detinue**

13. In actions of detinue the decree, if for the plaintiff—

- (a) may be in Form 149 and may be for the value of the goods detained together with a sum to be stated in the decree by way of damages for the detention and costs, but it may be part of the decree that the decree shall not issue if the defendant on or before a named day pays a specified sum for damages for the detention and costs and also returns the goods to the plaintiff and if the plaintiff accepts the same;
- (b) may be in Form 150 and may order the return of the goods detained together with a sum to be stated in the decree by way of damages for the detention and costs.

### **Decree rectifying or setting aside deed**

14. A decree rectifying a deed shall be in Form 151 and a decree setting aside a deed shall be in Form 152.

### **Order for preparation and execution of a deed**

15. Where an order directs any deed to be prepared and executed, it shall state by what party the deed is to be prepared and to whom it is to be submitted for approval and who is to bear the costs thereof; and if the parties cannot agree as to the form of the deed, the judge may, on the application of either party, settle the same himself or name counsel by whom the same is to be settled, subject to the final approval of the judge and his discretion as to costs.

### **Sale of land**

16.—(1) Where any land is ordered to be sold, the order shall direct who is to have the conduct of the sale, where the sale is to be held and by whom the conditions and contracts of sale and the abstract of title, if any such are necessary, is to be prepared.

(2) Where any land is ordered to be sold, any party bound by the order and in possession of the estate, or in receipt of the rents or profits thereof, shall be compelled to deliver up possession or receipt to the purchaser, or such other person as may be named in the order.

(3) Unless otherwise ordered, where an order is made directing any land to be sold—

- (a) the land shall be sold with the approval of the judge or subject to a reserved price fixed by the court at the best price that can be got;
- (b) all such parties as the judge directs shall join in the sale and conveyance and, where any party refuses or neglects to sign any necessary document, the judge may make an order vesting the land or authorising a specified person to sign such document on behalf of the party so refusing or neglecting; and
- (c) the person authorised by the conditions of sale to receive the purchaser's deposit shall forthwith upon the privity of the Accountant General lodge the amount of such deposit in accordance with Court Funds Rules and when the sale is complete the balance of the purchase money shall be lodged in like manner.

(4) A sale retained within the court shall be conducted in accordance with this Rule and Rule 18 and Order 34.

### **Sale of personal property**

17.—(1) Where an order directs any personal property to be sold, the property shall be sold by public auction or private contract as the judge directs and shall, unless otherwise ordered, be sold with the approval of the judge at the best price that can be got.

(2) Where any personal property is directed to be sold by public auction or to be detained or preserved, a receiver or such other person as the judge directs shall, if the judge so directs, superintend the sale, detention or preservation, and, where such property is directed to be sold by private contract, it shall be the duty of the receiver or other person as aforesaid unless the judge otherwise directs, to see that the directions of the judge are carried out.

(3) This Rule shall not apply to an execution which is required to be made by the Enforcement of Judgments Office under a decree to which the Judgments Enforcement (Northern Ireland) Order 1981 applies.

**Form of affidavit of value**

18. Where an affidavit is made for the purpose of enabling the court to fix reserve biddings, the value of the property shall be stated in an exhibit so as not to be disclosed by the affidavit when filed.

**Proof of payment of duty payable**

19. Before making any payment under or issuing an order directing the payment or transfer of any fund in respect of which any death duties are payable to the revenue it shall be the duty of the chief clerk to require a certificate from the proper officer of, or the production of the receipt for, the payment of the duty chargeable in respect of the fund.

**Order of High Court**

20. Where the High Court has heard and determined an appeal from a decree of a county court, the party entitled to the benefit of the order made on appeal shall deposit in the Office the order of the High Court or an office copy thereof.

**ORDER 34**

**Sale of land by the court**

**Application of this Order**

1. This Order shall apply to the conduct of a sale which is to be retained within the court.

**Approval of judge or reserved bidding**

2. The sale shall be subject to the approval of the judge or to a reserved bidding to be fixed by the court.

**Counsel, valuers and auctioneers**

3. The judge may from time to time appoint court conveyancing counsel, court valuers and court auctioneers, either generally or for particular sales, at such scales of fees as he may fix; and in default of any such appointments by the judge, the circuit registrar may nominate or approve appointments for particular sales.

**Bidding by parties**

4. A party to the suit shall not bid at the sale unless liberty to bid is given in the order for sale or the permission of the judge is obtained on application made on notice to the other parties to the suit.

### **Lodgment and approval of documents**

5.—(1) The solicitor for the party having carriage shall lodge in the Office for the approval of the circuit registrar and his directions thereon—

- (a) all documents of title in his possession or power;
- (b) unless dispensed with by the circuit registrar, the abstract of title;
- (c) draft particulars and conditions of sale in Form 154;
- (d) a draft advertisement; and
- (e) if so directed by the circuit registrar, a draft case for court counsel, drawing attention to any difficulties in connection with the title or the actual occupation of the property requiring special mention in the conditions of sale.

(2) The above documents when approved by the circuit registrar together with a copy of the certificate of the circuit registrar on his inquiry as to incumbrancers shall, if so directed by him, be submitted to court counsel and, where no such direction is given, the documents mentioned in Rule 7 may be lodged for approval in the Office at the same time as the documents mentioned in paragraph (1).

### **Joining of persons not before the court**

6. If counsel advises that any person necessary to make title is not before the court, the consent of such person to the sale and his undertaking to join in the purchase deed shall be procured in writing, and his signature verified by affidavit and failing such consent, notice of the order for sale shall be served on such person.

### **Procedure following return of papers from counsel**

7. On receiving the papers back from counsel, the solicitor having carriage shall—

- (a) re-lodge the papers in the Office for settling and fixing of dates by the circuit registrar and shall at the same time lodge—
  - (i) draft form of affidavit to be made by the court valuer in Form 155;
  - (ii) draft reserved bidding report in Form 156, to be marked as exhibit “B” to such affidavit;
  - (iii) an envelope marked “B” and endorsed with the title of the suit, to contain the valuer's reserved bidding report when completed;
  - (iv) draft auctioneer's affidavit of biddings in Form 157; and
  - (v) draft bidding paper in Form 158; and
- (b) send to the court valuer a copy of the advertisement and the documents mentioned in subparagraphs (i) to (iii) of paragraph (a) together with a covering letter instructing him as to—
  - (i) the completion and return to the solicitor of the affidavit mentioned in paragraph (a) (i) with the copy advertisement marked as exhibit “A” thereto; and
  - (ii) the completion and forwarding to the Office, before the date fixed for the sale, of the reserved bidding report mentioned in paragraph (a)(ii), which report shall be marked as exhibit “B” to the affidavit.

### **Attendance at sale**

8. The solicitor having carriage shall attend the sale and arrange for the completion by the court auctioneer of the documents mentioned in Rule 7(a)(iv) and (v), and re-lodging of all papers in the Office.

### **Where sale is subject to approval of judge**

9. Where a sale is subject to the approval of the judge—
- (a) the certificate of the circuit registrar shall be in Form 159; and
  - (b) the solicitor having carriage shall on notice to the proposed purchaser and the other parties make application to the judge by notice of motion in Form 160 for confirmation of the sale, and the judge may either confirm the sale by order in Form 161 or make such other order thereon as he thinks fit having regard to the court valuer's report and the biddings.

### **Where sale is subject to reserved price**

10.—(1) Where the sale is subject to a reserved price fixed by the court, the purchaser or his solicitor may attend the sitting of the circuit registrar on the day fixed by the advertisement, and if there be any objection to the confirmation of the sale it shall be stated at that sitting.

(2) Where the reserved price fixed by the court has been reached the circuit registrar may confirm the sale by certificate in Form 162 and direct that the deposit be forthwith lodged in court to the credit of the suit and the certificate of the circuit registrar confirming the sale shall be binding on all parties from the date thereof unless it is discharged or varied upon application to the judge by notice of motion made before the expiration of eight days from that date.

(3) Where the circuit registrar refuses to confirm the sale, he shall certify his refusal in Form 163 and direct that further proceedings shall be by way of either—

- (a) an application to the judge under Rule 9; or
- (b) advertisement for re-sale by tender, subject to the approval of the judge with such consequential directions thereon as he considers necessary;

and where he directs further proceedings under paragraph (b) he shall order the return of the deposit made by the highest bidder.

### **Order for execution of conveyance or for possession**

11. A notice of motion for an order for the execution of a conveyance or for possession shall be in Form 164, an order for the execution of a conveyance shall be in Form 165 and an order to put a purchaser in possession shall be in Form 166.

## **ORDER 35**

### **Ejectment proceedings**

#### **Record of ejectments**

1.—(1) The chief clerk shall enter in a book to be kept for that purpose particulars of all decrees in ejectment and for each such decree shall enter the names of the plaintiffs and defendants and the tenements recovered as specified in the civil bill concerning the same.

(2) The book kept under paragraph (1) shall be open for inspection during the hours when the Office is open on payment to the chief clerk of the prescribed fee.

### **Amount of rent due**

2. At the hearing of every ejectment proceeding for non-payment of rent, the chief clerk shall enter in the ejectment book the sum of money ascertained to be due and owing for rent, and the time up to which the same is due and the chief clerk, before he signs his name to such decree, shall compare with such entry the statement in the decree in such ejectment of the amount of rent so ascertained to be due; and the clerk shall certify on such decree the amount of rent so ascertained, and the date up to which the same is due.

### **Costs**

3. The judge, upon the hearing of any ejectment proceedings where there is more than one defendant, may order that the costs of the proceedings shall be paid by and recovered from one or more of such defendants and not from the other or others of them.

### **Restitution**

4.—(1) Where the defendant in ejectment proceedings for non-payment of rent, or any other person evicted by a decree for possession had in such ejectment proceedings, is entitled to redeem the lands and is desirous to obtain an order of restitution to be restored to the possession of the land after such decree has been executed, such person shall serve a notice upon the plaintiff in the said ejectment proceedings, in Form 167, before the beginning of a period of sixteen days ending on the entry day for the sittings at which the application for such order of restitution is intended to be made.

(2) The application for an order of restitution to restore a party to the possession of lands under section 70 of the Landlord and Tenant Law Amendment Act, Ireland, 1860 shall be made to the court for the division in which the ejectment decree has been obtained.

(3) The order of restitution, ordering a defendant to be restored to the possession of lands from which he had been evicted by a decree in ejectment proceedings for non-payment of rent, shall be in Form 168.

(4) When notice of an application for an order of restitution has been served pursuant to the said section 70 the plaintiff in the ejectment proceedings, if he intends claiming any rent not included in the ejectment decree, or which may have become due since the signing of the decree, shall give three days' notice of his intention to the party so applying for such order of restitution.

(5) Where a decree for possession in ejectment proceedings for non-payment of rent has been executed, and the landlord has been put into possession, and before the period of six months has expired for the redemption of the lands so evicted, any further rent has become due in respect of said lands, the party applying to the court for an order of restitution to be restored to the possession of the said lands mentioned in the said decree for possession shall, before such order of restitution issues, pay over or lodge in court such further rent as may be awarded by the court, in addition to the sum ascertained by the said decree to be due for rent and costs.

(6) Where the landlord has been put into possession of lands under a decree for possession in ejectment proceedings for non-payment of rent, and the tenant or party entitled to apply for an order of restitution requires such landlord to account for the profits of the lands received by him whilst he was so in possession, such tenant or party so applying for an order of restitution shall, in the notice that such application will be made, inform the landlord that he will be called oil to account, at the hearing of the application for such order of restitution, for such profits.

(7) Where there are several defendants in ejectment proceedings for non-payment of rent, and a decree is made ordering the costs to be paid by some or one of the defendants to the exclusion of the others, should the parties or party who are so exonerated from the payment of costs by such decree apply for an order of restitution to be restored to the possession of the premises after such decree has been executed, they or he shall in addition to the rent and arrears of rent due out of said premises, lodge in court the costs payable to the plaintiff in the suit, if not previously paid.

## ORDER 36

### Partition suits

#### **Abstract of title**

1. The plaintiff in a partition suit shall, at the time of lodging the civil bill, also lodge therewith a short abstract of title to the lands sought to be partitioned, which abstract shall show the respective shares and estates which the several owners are alleged to have in the lands.

#### **Consent of landlord**

2. If the lands sought to be partitioned are held subject to any agreement or condition restraining or prohibiting assignment or subdivision, or if they form part of an estate upon which the assignment or subdivision of holdings without the consent of the landlord is contrary to or not warranted by the practice prevalent upon such estate, the plaintiff shall at the hearing produce the consent in writing of the landlord, or his agent duly authorised for that purpose, that the lands in the civil bill mentioned be partitioned or sold as the court may direct.

#### **Consent of Department of Finance**

3. If the lands sought to be partitioned are charged with any advance repayable to the Department of finance, in manner provided by any statute authorising the advance of public money to tenants upon the security of their holdings, the plaintiff shall at the hearing produce the consent in writing of that Department, that the lands in the civil bill mentioned be partitioned or sold as the court may direct.

#### **Examination of and report on lands**

4.—(1) In partition suits the judge may employ a surveyor or other person to examine the lands sought to be partitioned, and to report in writing to the judge, by a day to be named, the manner in which, according to the opinion of such surveyor or other person, the lands should be partitioned, and the report shall be accompanied by a map showing the boundaries of the lands proposed to be partitioned.

(2) The surveyor or other person appointed shall be remunerated by the parties to the suit or such of them as the judge may direct.

(3) The report of the surveyor or other person appointed under paragraph (1), together with said map, shall be lodged by him in the Office at least fifteen days before the day named for making the report to the judge.

(4) The report and map when lodged in the Office shall be open to the inspection of all parties to the suit without payment of any fee.

#### **Decree**

5. The judge may either adopt such report, and make a decree in accordance with the terms thereof, or may make such other decree as he may think fit.



## ORDER 37

### Applications under section 37 of the Landlord and Tenant Law Amendment Act, Ireland, 1860

#### **Notice of application**

1. A notice of application to annul or vary a precept, order or conviction under section 37 of the Landlord and Tenant Law Amendment Act, Ireland, 1860 (in this Order referred to as “the Act of 1860”) shall be in Form 169 or Form 170 and shall be served at least three days before the entry day next following the service of such precept, the date of such order or the conviction in case there are at least ten days intervening between such service, date of conviction and the said entry day and if not then such application shall be made at the sittings next following.

#### **Claim for compensation**

2. Where a party claims compensation for any loss or damage caused by the procuring of a precept or order mentioned in section 35 of the Act of 1860, he shall serve a notice in Form 171 on the opposite party from whom he claims the compensation before the beginning of a period of sixteen days ending on the entry day for the sittings at which such claim is to be made.

#### **Venue and service of notices**

3.—(1) An application under section 37 of the Act of 1860 to annul or vary a precept, order or conviction or for compensation for any loss or damage caused by procuring such precept or order shall be made to the court for the division where the premises in respect of which the precept, order or conviction has been issued or made are in whole or in part situate or, if the opposite party resides outside the division, to the court for the division in which that party resides.

(2) A notice under Rule 1 or Rule 2 shall be served and entered in like manner as a civil bill.

## ORDER 38

### Administration of estates

#### **Lodgment of accounts by representatives of a deceased person**

1.—(1) Accounts lodged in accordance with Article 17 of the Order shall set out—

- (a) particulars of the property or assets which the testator or intestate died possessed of or entitled to;
- (b) the amount, produce and value of such property and assets respectively;
- (c) the amounts and particulars of the debts due by the testator or intestate; and
- (d) the amounts and particulars of the debts, legacies and funeral and testamentary expenses of the testator or intestate paid by or on account of the executor or administrator;

and shall show the balance applicable to the purposes of the will of the testator or, as the case may be, distributable amongst the next-of-kin of the intestate, or the property or the chattels then undisposed of.

(2) The accounts shall be signed by the executor or administrator and verified on oath by the executor or administrator.

(3) The accounts shall be lodged in the Office within one month from the date when he has been required in writing to do so by any person entitled so to require under Article 17 of the Order or within such extended time as the chief clerk may direct.

#### **Power to order advertisements**

2.—(1) In any proceeding for a legacy or distributive share of the property or assets of a testator or intestate, the judge may order the party suing to give notice, either by advertisement or otherwise, requiring persons having claims on or against the property and assets of the deceased to produce and verify such claims.

(2) All costs relating to such notice shall be borne and paid in such manner and by such parties as the judge shall direct.

(3) The judge may adjourn the hearing of the proceedings to some future sittings and from time to time as occasion may require so as to allow sufficient time for publishing and giving such notice.

#### **Lodgment of money in court**

3. In any proceedings for a legacy or distributive share of the property or assets of a testator or intestate, the judge may, if he thinks fit, order money to be paid into court in accordance with Court Funds Rules.

#### **Administration suits**

4.—(1) An administration suit may be commenced at any time after the death of the testator or intestate.

(2) Subject to Rules 2 and 3 of Order 36 the judge in administering the estate of a deceased person shall not be bound, for the purpose of distribution of any land, to sell and convert the land but may partition the land among the persons entitled to shares of the estate and for equality of partition may make a decree against any one or more of such persons for any excess in the value of the part or parts allotted to him or them.

## **ORDER 39**

### **Actions by and against firms and persons carrying on business in firm names**

#### **Partners may sue and be sued in name of their firm**

1.—(1) Two or more persons claiming or alleged to be liable as partners and carrying on business within Northern Ireland may sue and be sued in the name of the firm in which they were partners when the cause of action arose.

(2) Where partners sue or are sued in the name of their firm in accordance with this Rule, a statement that the plaintiffs are suing or the defendants are sued as a firm shall be included in the civil bill and in the title of the action.

(3) Where partners sue or are sued in the name of their firm, the partners shall, on demand made in writing by or on behalf of any other party, forthwith deliver to the party making the demand a statement of the names and places of residence of all the persons constituting the firm.

(4) If the partners fail to comply with the demand, the judge may, on application by any other party, order them to furnish and verify by oath or otherwise a statement of the names and places of residence of the persons who were partners in the firm when the cause of action arose.

(5) If the partners fail to comply with the order, the judge may—

- (a) if the partners are plaintiffs, direct the proceedings to be stayed until the order is complied with;
  - (b) if the partners are defendants, order that they be debarred from defending the action.
- (6) When the names and plates of residence of the partners have been stated, proceedings shall continue in the name of the firm.

**Action not in firm name**

2. Nothing in Rule 1 shall prevent partners from suing or being sued otherwise than in the firm name.

**Actions between a firm and its members**

3. The provisions of these Rules as to actions by or against firms shall apply to actions between a firm and one or more of its members, and between firms having one or more members in common, if the firm carries on business within Northern Ireland, but no enforcement proceedings shall be taken without leave of the judge, and on an application for leave to take such proceedings all such accounts and inquiries may be directed to be taken and made and all such directions may be given as may be just.

**Individuals carrying on business**

4. A person carrying on business in any name may be sued in that name as if it were a firm name, and so far as the nature of the case will permit, all the provisions of these Rules relating to actions against firms shall apply.

**Service of civil bill on partners**

5.—(1) Subject to the following paragraphs of this Rule, where partners are sued in the name of their firm, service of a civil bill shall be good service on all the partners, whether any of them is out of Northern Ireland or not, if the civil bill is served—

- (a) on a partner personally; or
- (b) at the principal place of the partnership business in Northern Ireland, on any person having, or appearing to have, at the time of service, the control and management of the business there;

but where the partnership has, to the knowledge of the plaintiff, been dissolved before the commencement of the action, the civil bill shall be served upon every person within Northern Ireland sought to be made liable.

(2) Where a person carrying on business in a name other than his own is sued in that name as if it were a firm name, the civil bill may be served in accordance with the foregoing provisions of this Rule as if he were a partner sued in the name of a firm and his business were a partnership business.

(3) Where a civil bill is served in accordance with this Rule, the endorsement or affidavit of service shall state whether the person served was served—

- (a) as a partner; or
- (b) as a person carrying on business in a name other than his own; or
- (c) as a person having, or appearing to have; the control or management of the business; or
- (d) as a person occupying a dual position.

### **Execution of decree against a firm**

- 6.—(1) A decree against a firm may be enforced—
- (a) against any property of the partnership in Northern Ireland;
  - (b) against any person who has been adjudged to be liable as a partner;
  - (c) against any person who was individually served with the civil bill as a partner or person sought to be made liable—
    - (i) in a default action, where the decree is made under Order 12, Rule 6;
    - (ii) in a summary action; where a decree is issued under Order 12, Rule 12(a);
    - (iii) in any other action, where he has failed to appear at the hearing.
- (2) If the person who has obtained the decree claims to be entitled to enforce it against a partner or otherwise, he may apply to the judge for leave so to do, and the following provisions shall apply—
- (a) he shall give to the alleged partner not less than three days' notice of his application;
  - (b) the notice shall be served on the alleged partner personally;
  - (c) on the hearing of the application, the judge—
    - (i) if liability is not disputed, may give leave for application to be made for enforcement under the Judgments Enforcement (Northern Ireland) Order 1981(19);
    - (ii) if liability is disputed, may order the issue of liability to be tried in such manner as he thinks fit and may give any necessary directions for that purpose.

### **Proceedings under Articles 106 to 110 of the Judgments Enforcement (Northern Ireland) Order 1981**

7. In Order 40, Part III, the expression “debtor” includes any person liable to execution under the foregoing provisions of this Order.

## **ORDER 40**

### **Enforcement of decrees**

#### **PART I**

#### **GENERAL**

### **Examination of any party**

1. Where any difficulty arises in or about the execution or enforcement of any decree for some relief other than the payment of money, the court may, except where under Article 11 of the Judgments Enforcement (Northern Ireland) Order 1981 jurisdiction to grant such relief is vested in the Enforcement of Judgments Office, on the application of any party interested, make such order for the attendance and examination of any party or otherwise as may be just.

### **Application on change of parties after decree**

2.—(1) Where any change has taken place after decree, by death, assignment, or otherwise, in the parties entitled to enforce a decree or in the parties liable under a decree, the party claiming to be entitled to enforce the decree may apply on affidavit to the court for leave to issue an amended

decree on surrender of the original decree and the court may, if satisfied that the party so applying is so entitled, order accordingly.

(2) The judge may, before making an order under paragraph (1), require such notice of the application to be served as he thinks fit.

(3) Notwithstanding anything contained in Order 1, the application referred to in paragraph (1) may be made to the court in which the order was made.

## PART II

### ENFORCEMENT BY COMMITTAL

#### **Enforcement by committal**

3. Decrees which under Article 55(4) of the Order and Order 57, Rule 5; are enforceable by committal may be enforced in the manner provided by Order 57, Rule 7.

## PART III

### PROCEDURE UNDER ARTICLES 106 TO 110 OF THE JUDGMENTS ENFORCEMENT (NORTHERN IRELAND) ORDER 1981

#### **Enforcement civil bill**

4.—(1) Proceedings under Article 107 of the Judgments Enforcement (Northern Ireland) Order 1981 where no instalment order has been made by the Enforcement of Judgments Office under Article 30 of that Order shall be commenced by a civil bill in Form 172 (in this Order referred to as an “enforcement civil bill”) requiring the debtor to appear personally before the court on the date therein specified.

(2) On the hearing of an enforcement civil bill the judge may make—

- (a) an order in Form 173 (in this Order referred to as an “enforcement order”) requiring the debtor to pay the amount due in such manner or by such instalments as the judge thinks fit; or
- (b) such an order committing the debtor to prison as may be made under Rule 5(2).

#### **Committal civil bill**

5.—(1) If the debtor makes default in paying the amount, or any instalment ordered under Rule 4 to be paid or due under an instalment order made by the Enforcement of Judgments Office under Article 30 of the Judgments Enforcement (Northern Ireland) Order 1981, the creditor may serve on the debtor a civil bill (in this Order referred to as a “committal civil bill”).

(2) A committal civil bill shall be in Form 174 and shall set out—

- (a) full particulars of the enforcement order which has not been complied with or of the order made under the said Article 30; and
- (b) the amount or instalment (or instalments) in the payment of which default has been made;

and shall require the debtor to appear personally on the date therein specified before the court sitting in the division wherein the enforcement order was made or, in the case of an order under the said Article 30, in the division in which he resides or carries on business, to show cause why he should not be committed to prison for his default in complying with that order. An order made under this Rule is in this Order referred to as a “committal order”.

### **Service of civil bills and hearing of proceedings under Rules 4 and 5**

6.—(1) Enforcement civil bills and committal civil bills shall be served personally on the debtor.

(2) Proceedings under Rules 4 and 5 shall be entered and conducted as if they had been commenced by ordinary civil bill, and county court rules and orders regulating procedure in relation to ordinary civil bills shall apply accordingly in so far as they are not inconsistent.

(3) Where proceedings under Rule 4 or Rule 5 are taken to enforce—

- (a) a decree of a county court, the decree shall be produced in court at the hearing of the proceedings;
- (b) a judgment or decree of any court other than a county court, a certified copy, or other sufficient evidence of such judgment or decree shall be so produced;

and where proceedings are taken under Rule 5 to enforce an order made by the Enforcement of Judgments Office under Article 30 of the Judgments Enforcement (Northern Ireland) Order 1981, a duly authenticated copy of the order shall be produced in court at the hearing.

(4) Upon the hearing of every enforcement civil bill and committal civil bill the judge may require evidence of any proceedings theretofore taken for the enforcement of the judgment or decree.

### **Committal order**

7.—(1) A committal order—

- (a) shall be in Form 175;
- (b) shall bear the date on which it was made; and
- (c) shall continue in force for one year and no longer.

(2) A committal order shall be addressed to the Chief Superintendent or, as the case may be, Superintendent for the Constabulary Division in which the debtor resides or is to be found.

### **Discharge from custody**

8.—(1) A debtor taken into custody under a committal order shall not be released from custody unless he pays to the constable or the governor of the prison to which he is committed the full amount of the debt or instalment in respect of which such order was made and the costs of the order or upon receipt by the governor of the certificate of discharge prescribed under paragraph (5).

(2) A constable or prison governor to whom a sum of money is paid by a debtor in accordance with paragraph (1) shall issue to the debtor a receipt therefor and shall endorse on the committal order a certificate of the amount he has received and the date thereof and the constable or prison governor shall sign his name at the foot of the certificate.

(3) Such sum shall be transmitted forthwith together with the committal order certified in accordance with paragraph (2) to the chief clerk of the court which issued the order and the amount of such sum shall be entered into a record book kept for the purposes of this Rule and then transmitted to the creditor or his solicitor forthwith.

(4) The creditor or his solicitor on receiving the sum transmitted to him by the chief clerk under paragraph (3) shall send him a receipt therefor.

(5) The certificate prescribed for the purposes of Article 10<sup>9</sup> of the Judgments Enforcement (Northern Ireland) Order 1981 shall be in Form 176 signed by the solicitor for the creditor, or signed by the creditor and attested before a justice of the peace or a commissioner for oaths, that there has been paid to or on account of the creditor by or on behalf of the debtor—

- (a) the debt or instalment in respect of which he was imprisoned;
- (b) the costs of the committal order;

and the creditor or his solicitor shall, if the debtor so requires, furnish to the debtor a copy of such certificate.

#### PART IV

##### CHARGES UNDER ARTICLE 46 OF THE JUDGMENTS ENFORCEMENT (NORTHERN IRELAND) ORDER 1981

##### **Proceedings under Article 14(c) of the County Courts (Northern Ireland) Order 1980 respecting land charged under Article 46 of the Judgments Enforcement (Northern Ireland) Order 1981**

9. Where a charge has been imposed on land by the Enforcement of Judgments Office under Article 46 of the Judgments Enforcement (Northern Ireland) Order 1981 and proceedings for enforcement of such charge are taken in a county court under Article 14(c) of the County Courts (Northern Ireland) Order 1980, such of Forms 24 and 27 and of Forms 73 and 75 as the circumstances require shall apply with any necessary modifications in the references to the date, nature and method of creation of the charge.

##### **Applications for possession of land charged under Article 46 of the Judgment Enforcement (Northern Ireland) Order 1981**

10. Where a charge has been imposed on land under Article 46 of the Judgments Enforcement (Northern Ireland) Order 1981 an application to the court for an order for possession thereof under Article 52(1)(b) of the said Order may be made by civil bill in Form 11, with any necessary modifications in such Form including the insertion therein of a reference to the date, nature and method of creation of the charge.

#### PART V

##### INFERIOR COURTS JUDGMENTS EXTENSION ACT 1882

##### **Proof that judgment is not satisfied**

11. Where under section 3 of the Inferior Courts Judgments Extension Act 1882 application is made for the grant of a certificate of a decree, proof that the decree has not been satisfied, and of the amount remaining unsatisfied where application for the enforcement of the decree has previously been made to the Enforcement of Judgments Office, shall be given by production to the chief clerk of a certificate signed by the Master for the enforcement of judgments or his deputy and, in any other case, shall be given to the satisfaction of the chief clerk, whether by certificate of the solicitor or by affidavit or otherwise as the chief clerk thinks fit.

##### **Where certificate not to be granted**

12. If the decree is for payment within a period therein mentioned, or by instalments, and that period has not expired or default has not been made in payment of some instalment, the certificate shall not be granted.

##### **Names, etc., in certificate**

13. The certificate shall be in Form 177 and the name, business or occupation and address of the parties shall be set out in the certificate and shall be those appearing in the decree and the party applying for a certificate shall produce to the chief clerk either the original decree or a duplicate thereof.

### **Entry on certificates**

14. The chief clerk shall endorse on the certificate the number of the civil bill, the court at which the same was entered and the amount remaining due on the decree according to the books of the court and, where appropriate, the certificate of the Master or deputy Master referred to in Rule 11, and, after his signature, shall add to the certificate the date on which it was granted.

### **Record and effect of granting a certificate**

15. Where a certificate of a decree is granted by a chief clerk; he shall make on the minute of the decree a memorandum of having granted such certificate, and thenceforth no further proceeding shall be taken or had upon such decree in the court granting the certificate until the judge of chief clerk, upon being satisfied by affidavit or otherwise that no further proceedings are pending or can be taken on the certificate in any other court and that the decree is still unsatisfied in whole or in part, orders that the decree may be acted on as if the certificate had not been granted.

### **Endorsement of costs on certificate**

16. The chief clerk shall make and sign on the certificate a note of the costs, if any, allowed and the fee paid for the granting of the certificate.

### **Production of certificate**

17. A person presenting a certificate of a decree for registration in a county court shall produce to the chief clerk—

- (a) a note of presentation in Form 178 containing a description of the place within the jurisdiction of the court at which the goods and chattels of the person against whom the decree has been obtained are, or at which such person resides or carries on business, and such note shall be appended to the certificate;
- (b) a copy of the certificate with the endorsement thereon and note thereon.

### **Registration of certificate**

18. On the production of the documents required by Rule 17, the chief clerk shall, if the place described in the note of presentation is within the division of the court of which he is chief clerk, sign the certificate and register it by inserting it into the then current minute book of the court and shall sign and date the copy of the certificate and return it to the person presenting the certificate.

### **Costs of registering certificate**

19. The sum allowed to a solicitor as the costs of registration of a certificate, together with the fee for registry and costs, if any, allowed for granting the certificate, as shown by the endorsement thereof, shall be added to the amount to be recovered.

### **Authenticated copy of the certificate for application to Enforcement of Judgments Office**

20. For the purposes of Rule 7(2)(e) of the Judgment Enforcement Rules (Northern Ireland) 1981(20), the copy of the certificate referred to in Rule 18 of this Order returned to the person who presented it, duly endorsed as to registration and signed by the chief clerk, shall be authenticated by the seal of the court of registration.



### **Payment out of court**

21. No money shall be paid out of court unless on production of the signed copy of the certificate.

### **Issue of another copy of certificate**

22. Where the certificate of a decree is lost or destroyed, another copy may be signed and issued to the proper person upon proof, by affidavit or otherwise to the satisfaction of the chief clerk, that the person applying is the proper person and that he is entitled to moneys recovered on a decree.

## **ORDER 41**

### **Duplicate Decrees**

#### **Duplicate decrees**

1. Where an original decree has been lost or destroyed, or has become unavailable to the plaintiff or party entitled to benefit thereunder, by reason of its having improperly got into the hands of the opposite party or being in the hands of any officer lawfully entitled to hold it, the plaintiff or party may apply to the judge either in court or chambers for the issue of a duplicate of the decree.

#### **Application**

2. Notice of an application under Rule 1 shall be given to the opposite party before the beginning of a period of seven days ending on the date of the hearing, which notice may be served by registered post.

#### **Evidence**

3. It shall lie with the applicant to satisfy the judge by oral evidence or affidavit of such facts as would under Rule 1 enable the application to be granted.

#### **Face of duplicate decree**

4. On the face of every duplicate decree issued under this Rule there shall be written or stamped in large letters the word “Duplicate” followed by the initials of the chief clerk.

#### **Effect of duplicate**

5. A duplicate decree shall for all purposes have the effect of the original decree and references in these Orders to a decree shall include a duplicate decree.

## **ORDER 42**

### **Deposit of money, bonds and recognizances as security**

#### **Security**

1. Where, by or under any enactment, any person is required or authorised to give security in relation to proceedings in the county court, then, subject to any express provision in the enactment—

- (a) the security shall be given by a deposit of money or by a bond or recognizance; and
- (b) the amount of the security shall be fixed by the chief clerk; and

- (c) the person giving the security shall give it at his own expense:

Provided that the chief clerk may accept in lieu of a deposit of money or a bond or recognizance an undertaking by a solicitor to pay any costs which the plaintiff may be ordered to pay to the defendant in the action.

### **Deposit of money**

2. Where security is given by a deposit of money, the following provisions shall apply—
- (a) the person giving the security shall, upon the privity of the Accountant General lodge the money in the county court bank in accordance with Court Funds Rules and shall also file in the Office a memorandum signed by him or his solicitor and approved by the chief clerk stating the conditions on which the deposit is made;
  - (b) upon the deposit being made, the chief clerk shall give to the person making the deposit a certificate in Form 179;
  - (c) the person making the deposit shall give to the opposite party notice of the deposit having been made;
  - (d) the judge may make such order regarding the money so deposited as he thinks fit.

### **Bond or recognizance**

3.—(1) The judge, circuit registrar or chief clerk may accept as a bond or recognizance an instrument executed by any solvent person or persons or by a body corporate (including an insurance company) approved by him.

(2) Where any party proposes to give a bond or recognizance by way of security he shall serve by post or otherwise, on the other party or parties and on the chief clerk at his office notice in Form 180 of the proposed sureties and such notice shall inform the parties on which it is served that if they object to the sureties or one of them they should send to the chief clerk notice (which notice may be in Form 181) of their objection within seven days from the date on which the notice is served on them.

(3) If any party objects to the sureties or one of them the chief clerk shall forthwith give notice in Form 182 to the parties of the day and hour at which he will consider the objection and shall then give such directions as he thinks fit.

(4) The bond or recognizance shall be executed in the presence of the judge, circuit registrar, the chief clerk or a commissioner for oaths or, where the person entering into such bond or recognizance resides outside Northern Ireland or is for the time being thereout, in the presence of any person duly authorised to administer oaths where such person ordinarily resides or is:

Provided that the chief clerk may accept a company's bond or recognizance if it is executed under the seal of the company.

(5) The bond or recognizance shall recite that the person or body corporate executing it is bound or indebted as the case may be to the judge for the time being within whose court the proceedings are and shall be deposited with the chief clerk at his office until the proceedings are finally disposed of.

(6) A chief clerk or other officer of the court or any servant or agent of them or any of them shall not become surety in any case where by these Rules or the practice of the court security is required.

## ORDER 43

### Practice generally

#### **Hours of sitting and order of hearing of proceedings**

1.—(1) The ordinary hours of sitting of a court shall be such as the judge of that court shall determine but shall not be before nine o'clock in the morning, and the hearing of any civil proceedings shall not commence after the hour of six o'clock in the afternoon.

(2) All proceedings in a county court shall be heard in such order as the judge shall direct.

#### **Change of solicitor**

2.—(1) Any party in any proceedings for whom a solicitor has acted who changes his solicitor shall give to the solicitor and to every other party written notice of the change, stating the name and address of his new solicitor, and shall lodge a copy of the notice with the chief clerk who shall file the same.

(2) Any party for whom a solicitor has acted who desires to act in person shall inform the solicitor and shall give notice to every other party stating his intention to act in person and giving an address for service and shall lodge a copy of the notice with the chief clerk who shall file the same.

(3) Where a party who has acted in person appoints a solicitor to act for him, he shall give notice of the appointment and of the solicitor's address for service to every other party and shall lodge a copy of the notice with the chief clerk who shall file the same.

(4) Where a solicitor's instructions to act for a party in any proceedings have been withdrawn or a solicitor wishes to withdraw from any such proceedings and notice has not been given of the appointment of a new solicitor or of the party's intention to act in person the solicitor may apply to the judge, on notice to all the parties to the action stating the grounds of the application, for an order declaring that he has ceased to act as the solicitor for that party in the proceedings.

#### **Delivery and lodgment of notices and documents**

3. All notices or documents required by any enactment to be delivered to or lodged with the circuit registrar or chief clerk may be delivered or lodged—

- (a) by leaving the notice or document at the Office with the chief clerk or with any clerk or assistant of the chief clerk; or
- (b) by sending the notice or document by registered post to the chief clerk at his office; posted at such time as to permit its delivery, in the ordinary course of post, within the period required by the enactment for the delivery of the notice or document.

#### **Office books and records: issue of copies**

4.—(1) The books and records to be kept and maintained by each chief clerk shall, subject to the Order and County Court Rules, be such as were kept and maintained by him immediately before the commencement of the Act and such other books and records as may be necessary to effect the purpose of these Rules.

(2) Copies of all documents and records which may be inspected in the Office shall, except as otherwise provided by any enactment, be prepared for any party requiring them upon payment of the cost of such copies.

### **Acts and notices by solicitor or agent**

5. Where by these Rules any act may be done or notice given by any party, such act may be done or notice given either by the party in person or by his solicitor or, if it can be legally done by an agent, by his agent.

### **Service on solicitor of party**

6. Where a party acts by a solicitor, service of any proceeding or document upon such solicitor, or delivery of the same at his office, or sending the same to him by post, shall be deemed to be good service upon the party for whom such solicitor acts, as upon the day when the same is so served or delivered or upon which, in the ordinary course of post, it would be delivered, except in cases where by these Orders or any other enactment personal service upon a party is required.

### **Service by advertisement**

7. Where, by reason of the absence of any party or from any other sufficient cause, the service of any notice, proceeding, or document (other than a civil bill or petition) cannot be effected, the judge may order notice by advertisement or otherwise in lieu of said service.

### **Advertisements**

8. The judge or circuit registrar or chief clerk as the case may be shall direct in what newspaper any advertisements which may from time to time be ordered in any suit or proceedings shall be inserted.

### **Party to have conduct of suit or matter**

9. The judge may order what party shall have the conduct of any suit or matter.

### **Enlargement or abridgement of time**

10. The judge may, upon such terms, if any, as he may think reasonable, enlarge or abridge any of the times fixed by these Rules for taking any step, or filing or sending any document, or giving any notice in any proceedings; and where any person has failed to take any step, or to file or serve any document, or to give any notice within the time or in the manner prescribed by these Rules, the judge may, upon the application of such person, and if he thinks sufficient excuse exists for such failure, and upon such terms as to costs or otherwise as he thinks fit, declare the taking of such step, or the filing or serving of such document, or the giving of such notice so done or effected, to be sufficient.

### **Interest on debts**

11. Where an estate has been ordered to be administered, creditors shall, unless otherwise entitled to interest at a different rate on the debts due to them from the estate, be entitled to interest in respect of those debts at the rate of £4 per centum per annum from the date of the order, and to the costs of successfully proving such debts.

### **Interest on legacies**

12. Interest shall be computed on legacies at the rate of £4 per centum per annum from the end of one year from the date of the death of the testator, unless otherwise ordered, or a different rate or time of payment is directed by the will or established by law.

## **Forms**

**13.**—(1) All proceedings and documents may be in forms similar to the forms in Appendix 1 to these Rules, where the same are applicable, or in a form as near thereto as the circumstances of a particular case admit; and in cases Where no forms are provided, parties shall frame the proceedings or documents, using as guides those contained in Appendix 1.

(2) Where a form in Appendix 1 is used in any proceedings in which there is only one plaintiff or, as the case may be, only one defendant and the heading of the form specifies the name of that plaintiff or defendant, any subsequent reference to that plaintiff or, as the case may be, that defendant need not refer to him by name and in any such form any blank space left immediately after the word "plaintiff" or, as the case may be, "defendant" may be ignored and need not be filled in.

## **Verbal or technical error; non-compliance with any rule or practice**

**14.**—(1) No action or proceeding in a county court shall be treated or considered as invalid solely on account of any verbal or technical error, and the judge may decide and determine what is a verbal or technical error in any action or proceeding; all errors which are not manifestly calculated to mislead or injuriously prejudice the opposite party in the merits of his case may be deemed to be merely verbal or technical.

(2) Non-compliance with any of these Rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court or a Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit.

## **Civil bill under-stamped**

**15.** Where a civil bill has not been stamped or has been stamped for an amount less than that specified in any County Court Fees Order for the time being in force, the judge may in such cases, and on such conditions including the payment of a penalty, if any, as he thinks fit, allow the proceeding to continue as if the civil bill had been properly stamped but, where it proceeding is allowed to continue under this Rule, the amount by which the fee was underpaid shall be paid by the party liable therefor in addition to any penalty payable by that party.

## **Notices**

**16.** Where by these Orders arty party is required to give notice according to a form in Appendix 1, it shall be sufficient if in the opinion of the judge the notice given complies substantially with such form.

## **Computation of time**

**17.** Without prejudice to section 39 of the Interpretation Act (Northern Ireland) 1954(**21**)—

- (a) where anything is required by these Orders to be done within a specified period of or after the happening of a particular event, the period shall be computed from the end of the day on which the event happens unless the period is expressed to be inclusive of such day;
- (b) where anything is required by these Orders to be done within a period not exceeding three days or where a period not exceeding three days is required by these Orders to elapse between the doing of an act and the happening of a particular event, no Saturday or Sunday nor any day on which the Office is closed shall "be included in the computation of that period;

- (c) where the time prescribed for doing any act expires on a Saturday or a Sunday or any day on which the Office is closed, the act shall be in time if done on the next day on which the Office is open.

#### **Accounts, notices, etc., to be on judicature paper**

**18.**—(1) All accounts, copies, papers, notices, and other documents lodged with the chief clerk or other officer are to be written upon judicature paper bookwise, unless the nature of the document renders it impracticable to do so, and shall be endorsed with the solicitor's name, and any document not so endorsed or not plainly and legibly written shall be refused.

(2) All decrees shall be written on judicature paper of a size not less than thirteen inches by eight inches unless the chief clerk in any particular case otherwise determines.

#### **Service by post**

**19.** Every notice or other document, the service of which by post or by registered post is permitted under these Orders, or the service of which by post or by registered post is directed by the judge, shall be deemed sufficiently given and served if it is transmitted by post by registered letter or recorded delivery service, the postage being prepaid, addressed to the person or persons directed to be served at his or their present or last known place of abode; and such service may be proved by affidavit.

#### **Documents to be free from erasures and alterations**

**20.** Unless the judge otherwise orders, no decree, dismiss, order, recognizance, or other document shall be received by the chief clerk or other officer unless the same is free from all unsightly or ambiguous erasures, interlineations or other alterations.

#### **Production of documents in custody of the chief clerk**

**21.** Where documents in the Office are required by any party to be produced in evidence, notice in writing to produce the same shall be served at the Office, on the chief clerk, seven days before the day on which the same may be required.

#### **Bail**

**22.** No solicitor, or apprentice or clerk to a solicitor or officer of the county court shall be bail in any matter in the county court.

#### **Equity practice**

**23.** Subject to the provisions of these Rules and Orders, the enactments and practice relating to ordinary civil bill actions shall, so far as the same are applicable, apply to every proceeding under the equitable jurisdiction of the court and when such enactments and practice are not applicable to such proceedings, the enactments and practice relating to the Chancery Division of the High Court shall be followed in such proceedings so far as the same are applicable, *mutatis mutandis*.

#### **Searches**

**24.** Searches may be made on such days in each week as shall be fixed from time to time by the judge, and notice thereof shall be printed and kept posted on some conspicuous place in the Office.

### **Instructing solicitor to attend counsel**

**25.** Except by leave of the judge on such terms as to costs or otherwise as to the judge may seem just, no counsel shall be heard unless he is instructed by a solicitor who is either personally present or represented by someone in attendance upon counsel at the hearing.

### **Proceedings by and against the Crown**

**26.** Save as otherwise provided by the Crown Proceedings Act and these Orders—

- (a) these Orders and any County Court Rules for the time being in force shall, so far as may be, apply to all proceedings by or against the Crown in like manner as they apply to proceedings between subjects; and
- (b) proceedings by or against the Crown shall, so far as may be, take the same form as proceedings between subjects.

## **ORDER 44**

### **Settlement of claims by and money recovered on behalf of minor or person of unsound mind**

#### **Compromise or payment of claim**

**1.—(1)** In any proceedings in which money or damages is or are claimed by or on behalf of or for the benefit of a minor or person of unsound mind suing either alone or in conjunction with other parties—

- (a) no settlement or compromise or acceptance of money paid into court, whether before, at or after the hearing, shall be valid without the approval of the judge;
- (b) no money or damages recovered or awarded in any such proceeding whether by settlement, compromise, payment into court or otherwise before, at or after the hearing shall be paid to any party or to the next friend, guardian ad litem or committee of any party or to any party's solicitor unless the judge so directs.

**(2)** All money so recovered or adjudged or ordered or awarded or agreed to be paid shall be dealt with as the judge shall direct and the said money or any part thereof may be so directed—

- (a) to be paid into court and to be invested or otherwise dealt with there; or
- (b) to be otherwise dealt with.

**(3)** The directions referred to in paragraph (2) may include any general or special directions that the judge may think fit to give, including (without prejudice to the generality of the foregoing provision) directions as to how the money is to be applied or dealt with and as to any payment to be made either directly or out of the amount paid into court to the plaintiff, to the next friend or to the solicitor for the plaintiff in respect of moneys paid or expenses incurred or for maintenance or otherwise for or on behalf of or for the benefit of the minor or person of unsound mind or otherwise, or to the solicitor for the plaintiff in respect of costs.

**(4)** Where, under, paragraph (2), money is directed to be paid into court on behalf of a minor, the next friend or solicitor of the minor shall lodge in the Office a copy of the minor's certificate of birth.

#### **Payment out and transfer of funds and securities in court**

**2.** Save as is otherwise provided in Court Funds Rules, money paid into court under Rule 1(2) or securities purchased under Rule 1(3) and the dividends or interest thereon shall not be sold, transferred or paid out to the party entitled thereto, except pursuant to the order of the judge.

**Lien for costs**

3. Nothing in this Order shall prejudice the lien of a solicitor for costs.

**ORDER 45**

**Funds in Court**

**PART I**

**ACCOUNTS**

**County Court Bank**

1.—(1) Subject to paragraph (2) and to Court Funds Rules, the county court for each division shall have a Civil Bill Account, a Criminal Injuries Account and a Security for Costs Account at such bank as the Lord Chancellor may, with the concurrence of the Treasury, designate.

(2) Where a chief clerk acts for more than one division of the county court, only one Civil Bill Account, one Criminal Injuries Account and one Security for Costs Account may, unless the Lord Chancellor otherwise directs, be kept for those divisions.

**PART II**

**INVESTMENT OF MONEYS PAID INTO-COURT**

**Investment**

2.—(1) Moneys paid into court shall be invested in the official name of the Accountant General in such of the following securities as may be directed by the judge—

- (a) securities issued by Her Majesty's Government in the United Kingdom, the Government of Northern Ireland or the Government of the Isle of Man, being fixed-interest securities registered in the United Kingdom or the Isle of Man, Treasury Bills or Tax Reserve certificates;
- (b) any securities the payment of interest on which is guaranteed by Her Majesty's Government in the United Kingdom or the Government of Northern Ireland;
- (c) fixed interest securities issued in the United Kingdom by the International Bank for Reconstruction and Development, being securities registered in the United Kingdom;
- (d) loans to any authority to which this paragraph applies charged on all or any of the revenues of the authority or on a fund into which all or any of those revenues are payable, in any fixed-interest securities issued in the United Kingdom by any such authority for the purpose of borrowing money so charged, and in deposits with any such authority by way of temporary loan made on the giving of a receipt by the treasurer or other similar officer of the authority, and in consideration of an undertaking to charge the loan as aforesaid.

This paragraph applies to the following authorities, that is to say:—

- (i) any local authority in the United Kingdom;
- (ii) any authority all the members of which are appointed or elected by one or more local authorities in the United Kingdom.

Pending or in lieu of such investment, moneys so paid in may be lodged on deposit receipt in any joint stock bank in Northern Ireland or lodged in a trustee savings or in the National Savings Bank.



## Interpretation

**4.** In this Part, the expression—

“debenture” includes debenture stock and bonds, whether constituting a charge on assets or not;  
“fixed-interest securities” means securities which under their terms of issue bear a fixed rate of interest;

“local authority” means any of the following authorities—

- (a) in Northern Ireland, the council of a district;
- (b) in England and Wales, a local authority within the meaning of the Local Government Act 1972<sup>(22)</sup>, and the council of the Isles of Scilly;
- (c) in Scotland, a local authority within the meaning of the Local Government (Scotland) Act 1973<sup>(23)</sup>,

“securities” includes shares, debentures; Treasury Bills and Tax Reserve Certificates;

“share” includes stock;

“Treasury Bills” includes Exchequer Bills and other bills issued by Her Majesty's Government in the United Kingdom.

## PART III

### PAYMENT OUT AND TRANSFER OF MONEYS, DIVIDENDS, INCOME, SECURITIES AND OTHER EFFECTS

#### Application for payment out, etc.

**4.** Where a person desires to apply to the court for the investment or payment out of any money or securities paid into court, the following provisions shall apply—

- (a) the application shall be made to the judge *ex parte*;
- (b) the judge on the hearing of the application may require notice of the application to be served on such persons as he thinks fit, and fix a day for the further hearing;
- (c) evidence in support of the application may be given by affidavit or in such other manner as the judge may direct.

#### Payment of moneys, dividends and income

**5.—(1)** In respect of any moneys paid into court or investments of such moneys, the judge may from time to time direct to whom and at what time or times any such moneys; or the dividends or income of any such investments, shall be payable and may vary such order as occasion may require.

(2) The judge may direct the transfer of such investments to such persons as may be decided to be entitled thereto.

(3) Money, securities and other effects paid into or deposited in court shall not, except as otherwise provided in Order 21, Rule 3, or court Funds Rules, be paid out or transferred except upon an order made by the judge.

#### Parts II and III not to apply to Criminal Injuries Account

**6.** Parts II and III of this Order shall not apply to moneys lodged to the credit of the Criminal Injuries Account.

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(22) 1972 c. 70

(23) 1973 c. 65

## ORDER 46

### Grant and revocation of probate and letters of administration

#### Commencement of proceedings

1. Proceedings under Article 15 of the Order shall be commenced by civil bill (in these Rules referred to as a “testamentary civil bill”) in such one of Forms 183 to 187 as is applicable.

#### Plaintiff and defendant

2.—(1) The person who applies for a grant of probate or letters of administration shall be the plaintiff in any proceedings by civil bill in relation thereto.

(2) A person who lodges a caveat against the grant of probate or letters of administration and appears to a warning of such caveat shall be a defendant.

(3) The person applying for the revocation of probate or letters of administration shall be the plaintiff in any proceedings by civil bill in relation thereto and the party against whom the application is made shall be the defendant in such proceedings.

#### Parties may be added

3.—(1) If on the hearing of any civil bill for the grant or revocation of probate or letters of administration, it appears to the judge that any person, not being already a plaintiff or defendant therein, ought to be made a party to the suit, he may adjourn the case and direct that such person shall be made a party thereto by amendment of the civil bill and shall be served with the civil bill.

(2) The judge may direct the mode and manner in which a civil bill is to be served under paragraph (1) and, if he directs substituted service, shall specify when and in what manner such service is to be effected.

#### Appearance by next-of-kin

4. Any of the next-of-kin or any person who would be entitled to a share in the distribution on intestacy of the estate of an alleged testator or intestate may appear at the hearing of a civil bill to which this Order applies though he may not have been made a party or been served with the civil bill, and upon any such appearance the judge may, if he thinks fit, amend the process by making such next-of-kin or person so appearing a defendant.

#### Cross suits

5.—(1) Where—

- (a) a grant of probate or letters of administration with the will annexed is objected to on the ground that there is another will of which probate or letters of administration with the will annexed ought to be granted; or
- (b) a grant of administration, in case of an alleged intestacy, is resisted on the ground that a will exists of which probate or letters of administration with such will annexed ought to be granted;

the party applying for probate or letters of administration and the party so setting up another will or a will shall respectively bring cross civil bill processes which shall be heard.

(2) Cross civil bill processes brought under paragraph (1) shall be heard by the judge at the same sittings and the judge shall decide upon the validity of the will or wills so set up.

(3) The civil bill in a cross process shall be served before the beginning of a period of seven days ending on the entry day for the sittings at which the original process is to be heard.

### **Will set up or relied upon**

6.—(1) No person shall be at liberty to set up or rely upon any will not already proved in common form unless such will, together with all testamentary documents or scripts, shall have been lodged in the Principal or District Registry and a grant of probate or letters of administration in respect thereof applied for.

(2) Where an unproved will is required to be produced at the hearing of any testamentary civil bill, the registrar or district registrar having custody thereof may, on a requisition being lodged with him; forward such will by registered post or deliver the same to the chief clerk at the court where the suit is to be heard.

(3) The chief clerk shall receive and produce such will at the hearing of the suit and at the conclusion of the hearing shall transmit such will by registered post or deliver the same to the registry where the will was originally lodged.

(4) The requisition to produce must be lodged in sufficient time to allow a certified copy of the will to be, made and filed in the registry prior to the posting thereof.

### **Entry of civil bill and lodgment of affidavits**

7.—(1) Rule 3 of Order 8 shall apply to a testamentary civil bill in like manner as it applies to an equity civil bill and, together with the testamentary civil bill and a copy thereof there shall be lodged with the chief clerk—

- (a) a certified copy of the affidavit (the content of which is, subject to anything provided to the contrary by a competent authority, indicated in Form 188) showing that the matter is within the jurisdiction of the court; and
- (b) where the plaintiff seeks to obtain a grant of probate or letters of administration, an affidavit specifying the names and addresses of the next-of-kin and such persons as may be entitled according to the law governing the distribution of intestates estates to any interest in the assets of the alleged testator or intestate named in the civil bill;

and such affidavits shall be kept amongst the records of the court and be produced by the chief clerk at the hearing of the civil bill.

(2) The affidavit under paragraph (1)(a) shall; except as provided in paragraph (3), be conclusive for the purpose of authorising the exercise of the jurisdiction of the court and the grant or revocation of probate or letters of administration in compliance with the decree of the judge, and no grant of probate or letters of administration shall be liable to be recalled, revoked or otherwise impeached by reason that—

- (a) the testator or intestate was not ordinarily resident within the division of the court; or
- (b) the gross value of the estate so far as it consisted of property other than land, sworn not to exceed three thousand pounds, did in fact exceed that amount or so far as it consisted of land, sworn not to exceed five hundred pounds in annual value, did in fact exceed that amount in annual value.

(3) Where it is shown to the judge before or at the hearing of the suit that the affidavit under paragraph (1)(a) is inaccurate and that he has not jurisdiction to hear the suit, he shall stay all further proceedings in his court in the matter, leaving any party to apply to the High Court for the grant or revocation and making such order as to the costs of the proceedings in his court as he thinks fit.

## **Records**

8.—(1) All testamentary civil bills shall be entered in the Testamentary Civil Bill Book to be kept by the chief clerk and each such suit shall be entered on a separate page, the two sides or pages of one leaf being allotted and allowed for the entry or copy of the one civil bill and of the proceedings on the hearing thereof.

(2) The chief clerk shall immediately following the entry of the process enter in the Testamentary Civil Bill Book the names of all witnesses examined on the hearing of a testamentary civil bill and shall also record the names of all parties to any written instrument produced at the hearing.

(3) The chief clerk shall record in the Testamentary Civil Bill Book the decree or order of the judge and shall sign and seal such record.

(4) The chief clerk shall, at all reasonable times, produce the Testamentary Civil Bill Book in the Office to any counsel, solicitor or party to the suit and permit them to search and shall give them, on demand, a copy of any entry therein.

## **Certificate of decree and decree**

9.—(1) The certificate of the decree of the judge to be transmitted by the chief clerk to the Principal or District Registry shall be in Form 189.

(2) The decree shall be in Form 190 or 191 or, where the suit is stopped for want of jurisdiction, in Form 192.

## **Where all parties are not present at the hearing**

10. Upon the hearing of any testamentary civil bill, the judge may, whether or not all the parties to the suit are present, proceed to consider the subject-matter of the civil bill and make a decree thereon, or he may adjourn the proceedings from time to time as he thinks fit.

## **Jurisdiction, powers and authority**

11. The judge in any proceedings for the grant or revocation of probate or letters of administration shall, subject to the provisions of the Act and these Rules, have the like jurisdiction, powers and authority to decide the matters at issue and to enforce any decree made therein or any order made in relation thereto as in any ordinary action.

## **Application of rules, practice and forms**

12. The rules, practice and forms in force and used in respect of proceedings other than proceedings for the grant or revocation of probate or letters of administration shall, so far as applicable and subject to the Rules of this Order, apply *mutatis mutandis* to proceedings for the grant or revocation of probate or letters of administration.

# **ORDER 47**

Construction of deeds, wills, etc., and determination of rights of persons thereunder

## **Application**

1.—(1) An application by any person claiming to be interested under a deed, will or other written instrument for the determination of any question of construction arising thereunder and for a declaration of the rights of persons interested shall be brought by equity civil bill.

(2) The civil bill shall be in Form 193 and, subject to Rule 2, shall be served on every person appearing to the plaintiff to have an interest in the question sought to be determined.

(3) The application shall be supported by such evidence as the judge may require.

### **Judge's powers as to service and representation**

2. The judge at the hearing shall have power—

- (a) to dispense with service of the civil bill on such persons as he thinks fit;
- (b) to appoint some one or more than one person to represent a class;
- (c) to direct service of the civil bill on any person not served therewith and appearing to him to have an interest in the said question.

### **Equity rules and practice to apply**

3. Where not otherwise expressly provided by these Rules the rules and practice for the time being in force in relation to civil bills in equity suits shall apply to all such applications as aforesaid.

## **ORDER 48**

### **Licensing**

#### **PART I**

#### **GENERAL**

### **Interpretation**

1.—(1) In this Order “the Act” means the Licensing Act (Northern Ireland) 1971; and a reference to a section is a reference to that section as numbered in that Act.

(2) A reference to the chief clerk is a reference to the chief clerk for the county court division in which the application is being made.

#### **PART II**

#### **APPLICATIONS FOR THE GRANT OF LICENCES**

### **Notices of application**

2.—(1) Notice of application in accordance with section 4 or 7 of and Schedule 1 to the Act for the grant or, as the case may be, for the provisional grant of a licence shall be in one of Forms 194 to 201 as may be appropriate; so, however, that the notice required by paragraph (1)(a) of that Schedule to be inserted in the newspapers referred to in that paragraph may omit to specify the address of the applicant for the licence or of the owner of the premises where the notice gives the address of the solicitor for the applicant.

(2) A person intending to make an application for the grant or provisional grant of a licence shall, in addition to complying with paragraph 1 of Schedule 1 to the Act, serve a copy of the notice upon the clerk of petty sessions for the petty sessions district in which the premises are situated.

(3) Where application is to be made at the time of the grant or provisional grant of the licence for an order under—

- (a) section 29 specifying any part of the premises as suitable for functions such as are mentioned in section 49(6) (functions for which extension licences may be granted); or

- (b) section 44 directing that the permitted hours for premises such as are specified in section 3(1)(b) or for part of such premises as are specified in section 3(1)(a) shall be the alternative permitted hours (for the sale of intoxicating liquor for consumption off the premises or such part thereof); or
- (c) section 45 directing that on certain weekdays in a specified part or parts of a hotel or restaurant (used for providing entertainment and refreshment) certain additional hours shall be included in the permitted hours,

such intention shall be stated in the notice of application; and, where the application is for an order under section 29, 44(1)(a), 44(2) or section 45, the plan attached to the notice in accordance with paragraph 3 of Schedule 1 to the Act shall particularly delineate or distinguish the part of the premises for which the order is sought.

(4) Where notice is given of an application for the grant or provisional grant of a licence for premises on a site approved by declaration under section 8 the notice shall refer to the fact that the premises are of the kind approved for that site by the declaration.

(5) A person entitled to appear at the hearing of an application and object to the provisional grant to a housing authority of a licence being declared final may, in addition or in the alternative to objecting on the ground specified in paragraph 11 of Schedule 1 to the Act, object on the ground that the premises have not been completed as required by section 7(7)(i) and, accordingly, that paragraph shall be modified by inserting at the end the words "or on the ground that the premises have not been completed as required by section 7(7)(i) or on both such grounds."

(6) A notice of application for a declaration that the grant of a licence is final in accordance with section 7(7) shall be in Form 202 and the applicant shall attach the licence to the notice for the purposes of section 7(10).

(7) A notice such as referred to in paragraph (6) shall be served by a person specified in section 7(7)(a) on the chief clerk and a copy thereof on the divisional commander of the police division in which the premises for which the licence was provisionally granted are situated and Part III of Schedule 1 to the Act shall, in relation to such person, have effect as if for paragraphs 9 and 11 of that Schedule respectively there were substituted the following paragraphs—

**“9.** Where a licence has been provisionally granted to a person who proposes to be the owner of the business to be carried on under the licence and he intends to apply to have the grant declared final, he shall, not less than three weeks before the time of the opening of the court sittings at which the application is to be made, serve notice of the application upon the chief clerk and at the same time serve a copy of the notice upon the divisional commander of the police division in which the premises for which the licence was provisionally granted are situated.

**11.** A divisional commander upon whom notice is required by paragraph 9 to be served (or any other member of the Royal Ulster Constabulary, not below the rank of sergeant, nominated by him) shall be entitled to appear at the hearing of the application and object to the grant of the licence being declared final on the ground that the premises have not been completed as required by section 7(7)(i).”.

(8) A person wishing to apply for the consent of the court under section 7(6) to the modification of plans at any time before a licence which has been provisionally granted is declared final shall serve notice in Form 203 on the chief clerk and a copy of the notice on the divisional commander of the police division to which the premises for which the licence was provisionally granted are or are to be situated, not less than three weeks before the time of the opening of the court sittings at which the application for such consent is to be heard, and shall attach to such notice and copy a copy of the modified plans complying with Rule 6 and clearly showing the proposed modifications.

(9) A notice of intention to object in accordance with paragraphs 4 and 6 or 11 of Schedule 1 to the Act to the grant or final grant of a licence shall be in Form 204.

(10) A notice published in the newspapers required by paragraph l(a) in Schedule 1 to the Act shall—

- (a) include a reference to the requirement that any person owning or residing or carrying on business in premises in the vicinity of the premises for which the licence is sought who intends to object to the grant of the licence must, in accordance with paragraph 6 of Schedule 1 to the Act, serve notice of his intention to object upon the applicant, the chief clerk and the divisional commander of the police division in which the premises for which the licence is sought are situated, not less than one week before the time of the opening of the court sitting specified in the notice so published;
- (b) state that the permissible grounds of objection are such as are specified in paragraph 4 of that schedule, namely, unfitness of applicant, unsuitability of premises and, where the premises are of a kind mentioned in section 3(1)(a) or (b) only and section 5(3) or paragraph 6 of schedule 3 does not apply, that the number of licensed premises of that kind in the vicinity is or will be adequate;
- (c) where appropriate, state that a subsisting licence is to be surrendered to the court and give particulars thereof.

(11) A notice of intention to object under paragraph 5 of Schedule 1 to the Act to the surrender of a subsisting licence shall be in Form 205.

### **Documents to be produced at hearing of application**

3.—(1) Where the application is for the grant or final grant of a licence for an hotel, evidence that the premises comply with section 84(1) of the Act as being registered in the register of hotels maintained by the Northern Ireland Tourist Board under section 10 of the Development of Tourist Traffic Act (Northern Ireland) 1948<sup>(24)</sup> shall be given at the hearing of the application by production of a certificate to that effect purporting to be authenticated in the manner provided by section 2 of that Act.

(2) Where the application is for the grant or declaration of the final grant of a licence for a restaurant, the certificate from the said Board referred to in the said section 84(1) (as to registration and compliance by the premises with certain requirements) and purporting to be so authenticated shall be produced at the hearing of the application.

(3) Where application is made for an order under section 29, the certificate from the Northern Ireland Tourist Board stating that the premises are registered in the register of restaurants maintained by the Board under section 10 of the Development of Tourist Traffic Act (Northern Ireland) 1948 shall be produced at the hearing of the application.

(4) Where application is made for an order under section 45 or for a licence under the Act for any place of entertainment any licence required by the sanitary authority under section 31 of the Local Government Act (Northern Ireland) 1934<sup>(25)</sup> must be produced at the hearing of the application.

(5) Where application is made to the court under section 12 of and Schedule 2 to the Intoxicating Liquor and Licensing Act (Northern Ireland) 1927<sup>(26)</sup> for the grant of a licence for premises primarily and ordinarily used as a theatre or music hall and also for a licence of the kind referred to in section 3(1)(e) of the Licensing Act (Northern Ireland) 1971 for the same premises the applications shall be heard together.

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<sup>(24)</sup> 1948 c. 4

<sup>(25)</sup> 1934 c. 22 (N.I.)

<sup>(26)</sup> 1927 c. 21 (N.I.)

### PART III

#### APPLICATIONS FOR DECLARATIONS OF APPROVED SITES UNDER SECTION 8 OF THE ACT

- 4.—(1) Notice of application in accordance with paragraph 3 of Schedule 3 to the Act for a declaration under section 8 of the Act shall be in Form 206.
- (2) Notice of intention to object in accordance with the said paragraph 3 shall be in Form 207.
- (3) Such a declaration shall be in Form 208.

### PART IV

#### APPLICATIONS UNDER SECTION 31(1)(i) OF THE ACT FOR CONSENT TO ALTERATIONS TO LICENSED PREMISES

- 5.—(1) Notice of application for an order under section 31(1)(i) of the Act for the consent of the court to such alterations as are referred to in section 31(1)(a) to (d) thereof shall be in Form 209.
- (2) Notice of intention to object under paragraph 5 of Schedule 8 to the Act shall be in Form 210.
- (3) An order consenting to such alterations shall be in Form 211.

#### **Requirements for plans to be attached to notice of application**

6.—(1) The plan required by paragraph 3(2) of Schedule 1 to the Act to be attached to a notice of application for the grant of a licence shall be to scale on linen or substantial paper and shall show each floor of the premises on a separate page measuring, where practicable, approximately eighteen inches by eighteen inches and certified by an architect, surveyor or any other person considered by the court to be competent to do so.

(2) The plan shall show the parts of the premises in which intoxicating liquor is sold, or in which it is intended that intoxicating liquor should be sold, by clearly distinguishing in bold hatched or shaded colour between that and other parts of the premises.

(3) Where the application relates to an hotel, each of the following parts shall be clearly distinguished (by shading in separately each part in a different colour from the others) namely, the part—

- (a) in which customers who are not residents or the guests of residents may be served with intoxicating liquor;
- (b) in which only residents may be so served;
- (c) set apart for the service of main table meals only to residents and their guests;
- (d) set apart for the service of main table meals whether to the public or to residents or their guests;
- (e) set apart for the service of intoxicating liquor and other beverages to diners before or after such meals.

#### **Copies of notices for divisional commander to be lodged at police station within police division**

7.—(1) Any notice, document or copy thereof required by the Act or this Order to be served upon the divisional commander of a police division shall be served, unless the divisional commander otherwise directs, by being lodged with the member of the Royal Ulster Constabulary for the time being in charge of a police station within the division in which the premises to which the document relates are situated.



(2) Notwithstanding anything in section 84(8), where the applicant is a body corporate, paragraph (1) shall have effect as if for the reference to the police division in which the applicant resides there were substituted a reference to that in which the body has its principal or registered office.

## ORDER 49

### Rent

#### PART I

#### GENERAL

#### **Interpretation**

1. In this Order “the Order” means the Rent (Northern Ireland) Order 1978(27).

#### PART II

#### APPEALS UNDER ARTICLE 11 OF THE ORDER

#### **Appeals to the county court against restricted rent certificates, regulated rent certificates and against refusal of application for regulated rent certificate**

2.—(1) An appeal under article 11 of the Order shall be by notice in such one of Forms 212 to 215 as may be appropriate and an order made by the court on such appeal may be in one of Forms 216 to 223.

(2) The District Council shall be the respondent to the appeal and the appellant shall serve the notice on the respondent in accordance with rule 10 and shall lodge the notice with the chief clerk together with a copy of the restricted rent certificate or regulated rent certificate served on the appellant by the respondent or, where the appeal is against the refusal of an application under article 9 of the Order, of the notice of refusal of the application.

(3) The appellant shall, in addition to complying with paragraph (2), serve in accordance with rule 9 a copy of the notice of appeal upon the landlord or, as the case may be, the tenant who shall thereupon become a party to the appeal and may appear and be heard.

#### PART III

#### APPLICATIONS UNDER ARTICLE 20 OF THE ORDER

#### **Applications by tenant for compensation under Article 20 of the Order**

3.—(1) An application by a tenant for compensation under article 20 of the Order shall be by notice in Form 224.

(2) The landlord shall be the respondent to the application and the applicant shall serve the notice on the respondent in accordance with rule 9 and shall lodge a copy with the chief clerk.

(3) An order awarding compensation under article 20 of the Order may be in Form 225.

## PART IV

### APPEALS UNDER ARTICLE 47 OF THE ORDER

#### **Appeals by landlord or tenant under article 47 against issue by district council of certificate of disrepair, etc.**

4.—(1) An appeal under article 47 of the Order shall be by notice in such one of Forms 226 to 229 as may be appropriate and an order made by the court may be in one of Forms 230 to 233.

(2) The District Council shall be respondent to the appeal and the appellant shall serve the notice on the respondent in accordance with rule 9 and shall lodge a copy of the notice of appeal with the chief clerk together with the certificate of disrepair issued under article 46 of the Order by the District Council or, where the District Council has issued a notice stating that it does not intend to issue such a certificate, a copy of that notice.

(3) The appellant shall, in addition to complying with paragraph (2), serve in accordance with rule 9 a copy of the notice of appeal upon the landlord or, as the case may be, the tenant who shall thereupon become a party to that appeal and may appear and be heard.

## PART V

### APPLICATIONS UNDER ARTICLE 69 OF THE ORDER

#### **Applications under article 69 of the Order for determination of certain questions in relation to tenancy**

5.—(1) An application under article 69 of the Order made for the purpose of determining any question—

- (a) as to whether a tenancy is a protected tenancy or whether any person is a statutory tenant of a dwelling-house; or
- (b) as to the rent recoverable under a regulated or restricted tenancy; or
- (c) as to whether a tenancy is a restricted or regulated tenancy;

shall be by notice in such one of Forms 234 to 237 as may be appropriate and a determination made by the Court on any such application may be in one of Forms 238 to 241.

(2) The landlord or, as the case may be, the tenant shall be the respondent to the application and the applicant shall serve the notice on the respondent in accordance with rule 9 and shall lodge a copy of the notice with the chief clerk together with a copy of any tenancy agreement referred to in the notice.

(3) The particulars of the tenancy in the notice shall state whether a protected tenancy purports to have been determined and the date of such termination and where it is alleged by the applicant that a statutory tenancy has arisen by succession or otherwise shall state the manner in which the tenancy has arisen.

(4) The particulars of any protected tenancy shall state the valuation of the dwelling-house at the grant of the tenancy, the permitted rent under the Rent Restriction Acts and how it is calculated by reference to the standard rent and any permitted increase under those Acts and whether the rates are payable by the landlord or tenant.

(5) Where the application is for the determination of any such question as is referred to in paragraph (b) of article 69(1) of the Order, the particulars in the notice shall in addition to those required under paragraph (4) include—

- (a) whether or not a regulated rent certificate or restricted rent certificate has been issued by a District Council with respect to the dwelling-house;

- (b) the net annual value of the dwelling-house as ascertained for the purposes of the Order under article 71 thereof;
- (c) details of any determination by a rent assessment committee under article 27 of the Order.

## PART VI

### APPLICATIONS UNDER SCHEDULE 1 OR 2 TO THE ORDER

#### **Applications for decision under paragraph 4 or 9 of Schedule 1 to the Order**

6.—(1) An application under paragraph 4 of Schedule 1 to the Order shall be by notice in Form 242 and an order made on such decision as is referred to in that paragraph shall be in Form 243.

(2) Such person or persons who are members of the original tenant's family referred to in paragraph 4 of Schedule 1 to the Order and who is not an applicant or who are not applicants for a decision of the court under that paragraph shall be the respondent or respondents to such an application.

(3) An application under paragraph 9 of Schedule 1 to the Order shall be by notice in Form 244 and an order made on such decision as is referred to in that paragraph shall be in Form 245.

(4) Such person or persons who are members of the first successor's family referred to in paragraph 9 of Schedule 1 to the Order and who is not an applicant for a decision of the court under that paragraph shall be the respondent or respondents to such an application.

(5) The applicant shall serve notice of the application on the respondent or respondents in accordance with rule 9 and shall lodge a copy of the notice with the chief clerk.

#### **Applications for an order under paragraph 2(1) of Schedule 2 to the Order**

7.—(1) An application under paragraph 2(1) of Schedule 2 to the Order shall be on notice in Form 246 and an order under paragraph 2(2) of this Schedule made on such application may be in Form 247.

(2) An order made under paragraph 2(3) of Schedule 2 to the Order may be in Form 248.

(3) The spouse entitled to occupy the dwelling-house by virtue of the protected or statutory tenancy shall be the respondent to the application and the applicant shall serve the notice on the respondent and on the landlord of the house subject to the tenancy in accordance with rule 9 and shall lodge a copy with the chief clerk.

(4) Before hearing such an application as is referred to in paragraph (1) of this rule the Court shall ascertain that notice has been served on the landlord under paragraph (3) in accordance with paragraph 2(7) of Schedule 2 to the Order and shall, before making an order upon such application, give the landlord an opportunity of being heard.

## PART VII

### SUPPLEMENTARY

#### **Court to which appeals and applications under the Order to be made**

8. An appeal or application under the Order shall be brought or made to the county court for the division in which the dwelling-house to which the appeal or application relates is situated and shall be heard at such times as the judge for that division may appoint in accordance with Article 4 of the County Courts (Northern Ireland) Order 1980 or, in lieu of such appointment, at the sitting of the Court for equity matters.

### **Service of notice and entry of appeals or applications**

9.—(1) Notice of an appeal or an application to be served on any party under these rules shall be served in accordance with Order 6 not less than twenty-eight days before the entry day for the sitting at which the application or appeal is to be heard.

(2) The appellant or applicant shall lodge a copy of the notice with the chief clerk at his office duly endorsed as to service and shall, where notice was served on the respondent by post in accordance with Order 6, attach to the copy any certificate of posting.

(3) Upon receipt of the copy of the notice the chief clerk shall enter the appeal or application for hearing at the appropriate sitting without requiring the production of an entry sheet.

## **ORDER 50**

### **Adoption**

#### **PART I**

#### **COMMENCEMENT OF PROCEEDINGS**

### **Interpretation**

1. In this Order—

- (a) “the Act” means the Adoption Act (Northern Ireland) 1967(28);
- (b) “adoption order” includes a provisional adoption order within the meaning of section 38 of the Act;
- (c) “area board” means the Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972 for the area in which the petitioner is, or was at the relevant time, resident;
- (d) “chief clerk” means the chief clerk for the county court division in which the application is being made;
- (e) “Registrar General” means the Registrar General for Northern Ireland.

### **Notice to Health and Social Services Board under section 3(1)(b) of Act**

2. Where service of notice to an area board of intention to apply for an adoption order is required under section 3(1)(b) of the Act such notice shall be in Form 249 and an affidavit of such service in accordance with Rule 26 shall be lodged with the chief clerk together with the copy of any such notice exhibited to the petition in accordance with Rule 26(2).

### **Application to be by petition**

3.—(1) Subject to paragraph (2), an application for an adoption order shall be made by petition in Form 250.

(2) An application for a provisional adoption order under section 38 of the Act shall be made by petition in Form 251.

### **Sittings at which petitions to be heard**

4. Every petition shall be listed for hearing at and heard at the sitting of the court for equity matters or on such other day or days as the Judge may appoint.

### **Issue of petition**

5. The petition shall be submitted, in accordance with Rule 26, to the chief clerk for issuing not less than one month before the day appointed for the hearing together with copies for service in accordance with Rule 7(1) and a copy for the use of the court; and he shall issue the petition by assigning a serial number thereto, and endorsing on the original and copies thereof a notice of the date of hearing and an interim appointment of the appropriate area board as guardian ad litem and shall return the copies for service.

### **Verification of petition and documents to be exhibited thereto**

6.—(1) Every petition and every document exhibited thereto under paragraph (2) shall be verified by affidavit in the form appended to Forms 250 and 251.

(2) Every document proper for proving the statements in the petition shall be exhibited thereto and in particular—

- (a) where notice under section 3(1)(b) of the Act is required to be served on the area board, a copy of the notice served;
- (b) except where the petitioner desires the court under section 5(1) of the Act to dispense with the consent of a parent or guardian of the infant, a document attested in accordance with section 6(3) of the Act signifying the consent of every parent or guardian of the infant in Form 252;
- (c) except where the petitioner desires the court under section 5(3) of the Act to dispense with the consent of his or her spouse or except where the petition is made jointly by two spouses, a statutory declaration in Form 253 signifying the consent of the spouse of the petitioner;
- (d) where the petition is a joint petition by spouses, their marriage certificate or other evidence of marriage;
- (e) where the birth of the infant has been registered or where the infant has been previously adopted, the birth certificate or, as the case may be, a certified copy of the entry in the Adopted Children Register, referred to in the Form of consent by the parent or guardian;
- (f) except where the petitioner is the mother or father of the infant or the infant has reached the upper limit of compulsory school age, the certificate of a fully-registered medical practitioner as to the health of the petitioner or petitioners which may be in Form 254.

### **Service of petition or notice of presentation**

7.—(1) The petitioner shall, not less than twenty-one days before the day appointed for the hearing of the petition, serve a copy of the petition on the guardian ad litem and, unless he desires his identity to be kept confidential, upon—

- (a) the parents (other than a petitioning parent) or guardian (if known) of the infant;
- (b) any person liable by virtue of any order or agreement to contribute to the support of the infant;
- (c) any person or body having the rights and powers of a parent of the infant under section 104 of or paragraph 14(1) of Schedule 5 to the Children and Young Persons Act (Northern Ireland) 1968(29);

- (d) the area board to whom the applicant has given notice under section 3(1) of the Act, where such area board is not the guardian ad litem;
- (e) any adoption society or, without prejudice to the foregoing, any local authority who has taken part in the arrangements for the adoption of the infant; and
- (f) any other person whom the court may direct;

and the court may, in its discretion, dispense with service of the copy of the petition or notice referred to in paragraph (2) on any of the persons mentioned in sub-paragraphs (a) to (e).

(2) If the petitioner desires, as stated in the petition, that his identity be kept confidential he shall, in lieu of a copy of the petition, serve upon the persons mentioned in paragraph (1)(a) to (f) a copy of a notice in Form 255.

(3) If the petitioner has no solicitor acting for him, the notice in Form 255 of the presentation of the petition shall be signed by the chief clerk.

#### **Notice of objection to the making of an adoption order**

8. Anyone wishing to object to the grant of an adoption order shall within ten days of the date of service on him of a copy of the petition or, as the case may be, notice of the presentation of the petition, give the chief clerk written notice of his intention to object quoting the serial number of the petition.

#### **Appointment of guardian ad item**

9.—(1) The chief clerk shall, after receipt of the petition, make an interim appointment of the appropriate area board as a guardian ad litem under section 11 of the Act, which appointment may be incorporated in the form of notice to be endorsed on the petition at the time of its issue.

(2) Such appointment may be confirmed by the judge or he may make another appointment under the said section 11.

(3) Rule 15 of Order 3 shall not apply to the appointment of a guardian ad litem under this Rule.

#### **Functions of guardian ad item**

10.—(1) The guardian ad litem shall, with a view to safeguarding the welfare of the infant, investigate as fully as possible all the circumstances relevant to the proposed adoption and shall, not later than seven days before the date appointed for the hearing of the petition, serve on the chief clerk a confidential report setting forth all the relevant circumstances including the following information:

- (a) particulars of the accommodation in the petitioner's home, its condition and of all the members of the petitioner's household;
- (b) the means of the petitioner and whether they are such as to enable him to bring up the infant suitably;
- (c) whether the petitioner suffers or has suffered from any serious illness and whether there is any history of tuberculosis, epilepsy or mental illness in the petitioner's family;
- (d) the occupation or status of the petitioner;
- (e) where the petition is that of one only of two spouses, why the other spouse is not a joint petitioner;
- (f) whether the petitioner understands the nature of an adoption order and, in particular, that the order if made will render him responsible for the maintenance and upbringing of the infant;
- (g) what rights, if any, the infant has in any property;

- (h) whether any insurance policy has been effected on the life of the infant, including any insurance relating to the infant under the enactments relating to friendly societies, collecting societies or industrial insurance companies to which section 21 of the Act applies whereby the rights and liabilities under such insurance will by virtue of an adoption order be transferred to the adopters;
  - (i) whether any person or body has given or agreed to give or, Whether directly or indirectly, agreed to receive any payment or reward whatsoever in consideration of or in connection with the adoption of the infant;
  - (j) whether the infant is able to understand the nature of an adoption order and, if so, whether the infant wishes to be adopted by the applicant;
  - (k) except where the petitioner or one of the petitioners is the mother of the infant, the date on which the mother of the infant ceased to have the infant in her care and possession and the name of any person to whom such care and possession was transferred;
  - (l) whether every consent to the making of an adoption order was freely given and with full understanding of the nature and effect of such order;
  - (m) where either parent of the infant is dead, who are the infant's surviving relatives and whether any such relative, so far as may be ascertained, wishes to be heard on the petition;
  - (n) where the infant is illegitimate, whether an affiliation order has been made in favour of the mother of the infant and the name, if known to the guardian ad litem, of the putative father or if anyone as putative father is liable by virtue of any order or agreement to contribute to the maintenance of the infant and whether the putative father wishes to be heard on the petition;
  - (o) whether the infant has been baptised;
  - (p) if the infant has been medically examined, a report of the examination;
  - (q) the religious persuasion of the petitioner;
  - (r) why the petitioner wishes to adopt the infant;
  - (s) such other information including an assessment of the applicant's personality and, where appropriate, that of the infant as has a bearing on the mutual suitability of the petitioner and the infant and on the ability of the petitioner to bring lip the infant.
- (2) Without prejudice to paragraph (1), the guardian ad litem shall inform the court if he learns of any person or body who wishes or ought, in his opinion, to be heard by the court on the question whether an adoption order should be made.
- (3) The guardian ad litem shall ascertain and inform the petitioner—
- (a) what treatment the infant has received with a view to immunising him against disease;
  - (b) whether an insurance policy for the payment of funeral expenses on the death of the infant has been effected.

## PART II

### HEARING OF PETITION

#### Objections

**11.**—(1) Where the chief clerk receives notice of objection under Rule 8 he shall notify the judge, the petitioner or his solicitor and the guardian ad litem, and the judge shall direct what steps are to be taken.

(2) The judge may direct that the person who served such notice of objection shall appear before him in his chambers on a date fixed by him and upon hearing the nature or grounds for objection made by him or by his legal representative on his behalf may make such direction or order as appears just.

### **Procedure on the hearing**

**12.**—(1) Any proceedings under the Act shall be heard in Chambers.

(2) Without prejudice to Rule 26(2), evidence may be given orally or on affidavit, but the judge may where the evidence of any party is on affidavit require such person to give oral evidence.

(3) The court may refuse to make an adoption order, unless all parties, including the infant, attend before it, but it shall have power in its discretion to dispense with the attendance of any party, including the infant.

### **Privacy of proceedings**

**13.**—(1) The court may direct that any of the parties shall attend separately and apart from the others or that any party, including the infant, shall be interviewed privately and separately.

(2) Without prejudice to Rule 12(1), adoption proceedings shall in general and, in particular, having due regard to any express statement in a petition that the petitioner desires his identity to be kept confidential, where practicable, be so conducted as to ensure that a petitioner is not seen by or made known to any person whose consent to the adoption order is required.

### **Provisional adoption orders**

**14.**—(1) An applicant for a provisional adoption order shall provide evidence of the law of adoption of the country in which he is domiciled.

(2) An affidavit as to that law sworn by a person who is conversant with it and who practises or has practised as a barrister or advocate in that country or is a duly-accredited representative of the government of that country in the United Kingdom shall, if it is exhibited to the petitioner for the provisional adoption order, be admissible without any such notice as is required by Rule 5 of Order 24.

(3) Where, owing to special circumstances, a petition for a provisional adoption order appears proper to be dealt with by the Lord Chief Justice, the court may direct that such petition be transferred accordingly.

(4) Where a direction is made under paragraph (3), the chief clerk shall transmit the petition and all other documents in his possession relating thereto to the Master (Care and Protection).

### **Interim Orders**

**15.**—(1) Where the court under section 8 of the Act postpones the determination of the application for an adoption order and makes an interim order in accordance with that section, the interim order shall be in Form 256 and the forms and duration of the order specified under subsection (1) of that section shall be fully set out in the order.

(2) The petitioner shall, not less than twenty-one days before the expiration of the period specified in the interim order, or such extended period as the court may in special circumstances allow, serve on the guardian ad litem and such other person or persons (if any) as the court may direct, an application for the final determination of his petition for an adoption order or for the discharge of the interim order, as the case may be, and not less than seven days before the day appointed for the hearing of the application file a copy thereof with the chief clerk together with the affidavit of such service in accordance with Rule 26.

(3) An application for the final determination of a petition for an adoption order referred to in paragraph (2) shall be in Form 257 and an application for the discharge of the interim order shall be in Form 258.

(4) An application by a guardian ad litem under section 8(6) of the Act for the final determination of the petition for an adoption order shall be in Form 259 and the guardian ad litem shall, not less than



twenty-one days before the day appointed for the hearing of the application, serve such application on the petitioner and on such other persons, if any, as the court may direct and not less than seven days before that day file a copy thereof with the chief clerk together with the affidavit of such service in accordance with Rule 26.

(5) The provisions of Rules 12 and 13 shall apply to an application for the final determination of a petition for an adoption order or for the discharge of an interim order in accordance with this Rule.

(6) An order discharging an interim order shall be in Form 260.

### PART III GENERAL

#### **Where previous application made for adoption of same infant**

**16.** If it appears that the applicant has previously made an application for an adoption order in respect of the same infant to the High Court or to a county court and that the court after hearing the application refused to grant such order, the chief clerk shall bring the matter to the attention of the judge and the court shall not proceed on the application unless the judge is satisfied that there has been a substantial change in the circumstances since the previous application.

#### **Cases more fit to be dealt with by the High Court**

**17.** Subject to Rule 14(3), if owing to special circumstances any application appears to the judge more fit to be dealt with by the High Court, he may, at any stage of the proceedings, refuse on that ground expressly to make an order.

#### **Attestation of consent when executed outside United Kingdom**

**18.—(1)** Where a document signifying the consent of a parent or guardian to an adoption order is executed outside the United Kingdom it shall be sufficiently attested for the purposes of section 6(3) of the Act if it is attested by any of the following persons—

- (a) any person for the time being authorised by law in the place where the document is executed to administer an oath for any judicial or legal purpose;
- (b) a British consular officer;
- (c) a notary public; or
- (d) if the person executing the document is serving in any of the regular armed forces of the Crown, an officer holding a commission in any of those forces.

(2) In paragraph (1)(d) the expression “regular armed forces of the Crown” means the Royal Navy, the regular forces as defined by section 225 of the Army Act 1955<sup>(30)</sup>, the regular air force as defined by section 223 of the Air Force Act 1955<sup>(31)</sup>, the Women's Royal Naval Service, Queen Alexandra's Royal Naval Nursing Service and Voluntary Aid Detachments serving with the Royal Navy.

#### **Keeping of documents and information**

**19.—(1)** All documents relating to proceedings under the Act, the Adoption of Children Act (Northern Ireland) 1950<sup>(32)</sup> or any enactment repealed by the said Act of 1950 shall, while they are in the custody of the court, be kept in a place of special security.

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<sup>(30)</sup> 1955 c. 18

<sup>(31)</sup> 1955 c. 19

<sup>(32)</sup> 1950 c. 6 (N.I.)

(2) Any information obtained by any person in the course of, or relating to proceedings under the said Acts, shall be treated as confidential and shall not be disclosed by him except so far as may be necessary for the proper execution of his duty.

### **Birth certificates**

**20.**—(1) Where the infant is identified in the petition for an adoption order by reference to a birth certificate which is the same, or relates to the same entry in the Register of Births, as a birth certificate referred to in a form of consent by a parent or a guardian of the infant, the infant whom the petitioner desires to adopt shall be deemed, unless the contrary appears, to be identical with the infant to whom the form of consent refers.

(2) Where the infant has previously been adopted, paragraph (1) shall have effect as if for references to a birth certificate there were substituted references to a certified copy of an entry in the Adopted Children Register and as if for the reference to the Register of Births there were substituted a reference to that Register.

### **Form and transmission of orders**

**21.**—(1) Subject to paragraph (2), an adoption order shall be in Form 261.

(2) A provisional adoption order shall be in Form 262 and in the fifth column of the Schedule thereto there shall be recorded the fact that the order is provisional.

(3) It shall be the duty of the applicant or his solicitor to forward to the chief clerk the appropriate form of order for signing and sealing, within one month from the date of hearing.

(4) The chief clerk shall be the prescribed officer for the purposes of section 24(6) and of section 25(2) of the Act and upon the making of an adoption order or an amendment to such order, he shall forward to the Registrar General a sealed copy thereof by registered post or by the recorded delivery service in an envelope marked “Confidential”.

### **Copies of adoption orders not to be supplied except in certain cases**

**22.**—(1) The chief clerk shall not supply a copy of or any information relating to an adoption order or an interim order or allow access to any file except—

- (a) in accordance with Rule 21(4); or
- (b) at the request of the Registrar General, the adopters or a petitioner; or
- (c) on the application of any person under an order of the judge.

(2) This Rule also applies to an adoption order or an interim order made under the Adoption of Children Act (Northern Ireland) 1950 or any enactment repealed by that Act.

### **Notice of decision of court to be given**

**23.** Where a person has objected to the making of an adoption order, the chief clerk shall as soon as practicable after the decision of the court on the application for such order, give notice thereof to that person and to the petitioner.

### **Notice to court by which an affiliation order has been made**

**24.** Where an adoption order is made in respect of an infant who is illegitimate, then, unless the adopter is the mother of such infant and she is a single woman, the chief clerk shall serve notice of the order on any court which appears to him to have made an affiliation order which is still in force with respect to the infant.

### **Application for amendment or revocation of adoption orders, supply of copies, etc.**

**25.**—(1) An application—

- (a) under section 25(1) of the Act for the amendment of an adoption order or for the revocation of a direction for the marking of an entry in the Register of Births or Adopted Children Register;
- (b) under section 3 of the Legitimacy Act (Northern Ireland) 1961<sup>(33)</sup> for the revocation of an adoption order;
- (c) under Rule 22(1)(c) for the supply of a copy of, or information relating to, an adoption order; or
- (d) under section 23(3) of the Act for an order for the furnishing of information contained in the books kept by the Registrar General under section 23(1)(c) thereof;

may be made *ex parte* in the first instance, but the Judge may require notice of the application to be served on such persons as he may direct.

(2) Where an application referred to in sub-paragraph (a) or (b) of paragraph (1) is granted, the chief clerk shall send to the Registrar General a notice specifying the date of the adoption order and the names of the adopter and of the adopted person as given in the Schedule to the adoption order and either stating the amendments to the adoption order made by the court or informing him of the revocation of the direction or adoption order, as the case may be.

(3) Where an application referred to in sub-paragraph (d) of paragraph (1) is granted, the chief clerk shall send a copy of the order of the court to the Registrar General.

(4) Such notice or order shall be contained in an envelope marked “Confidential” and sent by registered post or by the recorded delivery service.

(5) Where an adoption order made under the Adoption of Children Act (Northern Ireland) 1929<sup>(34)</sup> or under the Adoption of Children Act (Northern Ireland) 1950<sup>(35)</sup> is amended, the said notice shall be in a form similar to the Schedule to Form 261 and contain all the particulars to be entered in the Adopted Children Register.

### **Service and filing of documents**

**26.**—(1) A notice or other document or copy thereof required to be served or sent under the Act or this Order may be served personally on the person to be served or sent by registered post or by the recorded delivery service in an envelope addressed to the person to be served at his place of residence or, in the case of service on an area board or other body, addressed to it at its official address or by delivering it personally to the secretary, clerk or other responsible officer of the authority or body at its office.

(2) Proof of service of documents under the Act and this Order shall be on affidavit.

(3) Where a document is served by post in accordance with this Rule—

- (a) the envelope in which it is enclosed shall be marked “Confidential”; and
- (b) the receipt for its posting shall be attached to the copy thereof referred to in the affidavit of posting.

(4) A petition submitted to the chief clerk for issue under Rule 5, and any notice, affidavit, or other document or copy thereof required to be filed with the chief clerk under these Rules shall be so submitted, or, as the case may be, filed either by delivery thereof to him personally or to some

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<sup>(33)</sup> 1961 c. 5 (N.I.)

<sup>(34)</sup> 1929 c. 15 (N.I.)

<sup>(35)</sup> 1950 c. 6 (N.I.)

responsible person at his office or by sending the document by registered post or by the recorded delivery service in an envelope addressed to him at that office.

(5) Notwithstanding anything in Order 6, any notice, petition or other document referred to in this Rule may be served by a process server, a solicitor or member of the staff of that solicitor's office over sixteen years of age.

### **Enlargement or abridgement of time in special circumstances**

27. The court shall have power, in special circumstances, to enlarge or abridge the time appointed or allowed by this Order (not being a time specified in the Act) for doing any act or taking any proceedings, upon such terms (including terms as to costs) as it thinks fit and any enlargement may be ordered although the application therefor is not made until after the expiration of the time appointed or allowed.

### **Application of equity practice and procedure**

28. In any matter not provided for in the foregoing rules, the practice and procedure of the Court in equity matters shall be followed.

## **ORDER 55**

### **Costs**

#### **APPENDIX 2**

### **Decrees to carry costs**

1. A decree granted by a county court shall, except as otherwise provided by any statute or rule, carry such costs as are provided by this Order.

### **Scales of costs**

2. Subject to Rule 7(2), in all actions, suits and matters and other proceedings commenced on or after the 1st January 1980, there shall be payable—

- (a) to counsel and solicitors, costs according to the scales set out in Appendix 2 and subject to the provisions hereinafter in this Order specified;
- (b) to or in respect of witnesses; fees and expenses subject to the provisions hereinafter in Rule 6 specified.

### **Party and party costs**

3.—(1) The above-mentioned costs, fees and expenses together with all court and service fees shall be payable between party and party.

(2) Where in any proceedings a decree is given for the plaintiff against one or more but not all the defendants, the judge may in his discretion either—

- (a) order the unsuccessful defendant or defendants to pay the costs of the successful defendant or defendants; or
- (b) order the plaintiff to pay the costs of the successful defendant or defendants and add those costs to the costs which the unsuccessful defendant is ordered to pay to the plaintiff;

and an order under sub-paragraph (b) shall be in Form 263.

### **Value added tax**

4. In addition to the costs, fees and expenses referred to in Rule 2 a successful party may, as between party and party (except where the proceedings are by summary or default civil bill or by ordinary civil bill which is undefended) recover a sum equivalent to the value added tax at the appropriate rate on so much of the amount of those costs, fees and expenses as were incurred in respect of any taxable supply of goods or services within the meaning of Part I of the Finance Act 1971<sup>(36)</sup>; but only in so far as the tax is not deductible as input tax by the successful party.

### **Solicitor and client costs**

5.—(1) As between solicitor and client the solicitor for the plaintiff shall be entitled to the above-mentioned costs and also to be reimbursed all outlay reasonably incurred, and his costs shall—

- (a) where they are referable to any scale based on a specific sum claimed or awarded, be calculated upon the amount claimed and not upon the amount awarded and, in a remitted action, as if a sum of £2,006 had been claimed;

Provided that—

- (i) where in any case it appears that the amount claimed in the county court or, in a remitted action, the issue of a writ, was not reasonable, and proper and was not in accordance with the instructions received by the solicitor from his client, such proportionately less sum may be allowed, whether for outlay or for costs, as may be appropriate; and
- (ii) credit shall be given to the client for any party and party costs actually received by his solicitor.
  - (b) where in the exercise of his discretion the judge makes a special order as to costs, be calculated in accordance with the order.

(2) As between solicitor and client the solicitor for the defendant shall be entitled to make such reasonable charges as are appropriate to work in the county court and in relation to remitted actions to work in both the High Court and county court having regard to the nature and importance of the case to his client, the time spent, and the amount of money or the property involved, after giving credit to the client for any party and party costs actually received by the solicitor. In preparing his bill the solicitor shall take into account the relevant county court scales, both on amount awarded and on amount claimed, having regard to the degree of responsibility necessarily assumed by him in the interest of his client.

### **Witnesses' fees and expenses**

6. Without prejudice to any discretion exercisable by the Taxing Master of the Supreme Court under the Solicitors (Ireland) Act 1849<sup>(37)</sup>, there may be allowed to or in respect of witnesses such fees and expenses as the judge shall in his discretion think just.

### **Exercise of discretion in respect of costs**

7.—(1) In any suit or proceedings for which no scale of costs is prescribed, the amount of costs shall be in the discretion of the judge.

(2) Where, in any suit or proceedings for which a scale of costs is prescribed, the judge is satisfied that any party has unreasonably and for the primary purpose of increasing his costs included in his claim an amount in respect of any undisputed loss or damage, the judge may reduce the amount of costs payable to that party by such amount as he shall think fit.

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<sup>(36)</sup> 1972 c. 41

<sup>(37)</sup> 1849 c. 53

### **Exercise of discretion in absence of party**

8. Any discretion exercisable by the judge as to the amount to be allowed for any fees or costs may be exercised notwithstanding that the party liable to pay such fees or costs is not present or represented.

### **Taxation of costs**

9.—(1) All costs in equity suits or proceedings shall in default of agreement, and subject to Order 44, Rule 1, be taxed by the circuit registrar, subject to the revision of such taxation by the judge.

(2) In taxing costs incurred in the High Court in any suit or action previous to the remittal thereof to the county court, or during the progress thereof, the circuit registrar shall tax those costs when required by the judge according to the costs and fees payable in the High Court, subject to revision by the judge.

(3) In any taxation of costs, whenever items appear for disbursement, they shall be vouched in such manner as the taxing officer considers proper, subject to the decision of the judge appealed to.

(4) With respect to any costs and allowances which are discretionary, the officer on taxation shall take into consideration the amount or value of the subject matter of the suit and the general nature and circumstances of the particular case as well as the work actually done.

(5) In addition to the amount of costs allowed to a party on taxation in respect of the supply of goods or services on which value added tax is chargeable, there may be allowed as a disbursement a sum equivalent to value added tax at the appropriate rate on that amount in so far as the tax is not deductible as input tax by that party.

(6) Where any party seeks to have the taxation of costs reviewed by the judge, he shall serve on the circuit registrar notice of the items to which he objects.

### **Counterclaim**

10.—(1) Where both claim and counterclaim are dismissed, as between party and party each decree shall carry costs on the scale of a defendant's costs of a dismiss on the amount claimed. Provided that the judge may direct that one decree only shall issue for the difference, if any, between the costs of the parties, or if such costs are of the same amount that no decree shall issue.

(2) Where both the claim and the counterclaim are established, then, subject to (3) hereof, as between party and party each decree shall carry costs on the scale appropriate to the amount decreed.

(3) Where both the claim and counterclaim are established and a balance is decreed in accordance with Rule 8(1) of Order 25 then, in the absence of any special order by the judge under paragraph (2) of such Rule, the costs as between the parties shall be in accordance with the scale appropriate to such balance as decreed.

(4) Where a plaintiff succeeds on his claim and a counterclaim against him is dismissed, or where a defendant succeeds on his counterclaim and the claim against him is dismissed, the judge shall upon application at the hearing decide what proportion (if any) of the scale costs appropriate to a dismiss on the amount claimed in the unsuccessful suit shall be payable to the successful party by way of additional costs occasioned by the defence of the other party's claim, and such costs (if any) shall be added to the scale costs on the amount decreed.

(5) As between solicitor and client, subject to Rule 5 of this Order, the solicitor shall be entitled to such additional costs as are appropriate to any additional work or responsibility occasioned by the prosecution or the defence of the counterclaim; but" he shall not be entitled to additional costs on the counterclaim in respect of any item common to both claim and counterclaim.

(6) In this Rule the expression "costs" includes any witnesses expenses allowed by the judge.

### **Undefended proceedings**

**11.**—(1) For the purpose of this Order proceedings shall be treated as undefended if—

(a) no defence is entered and the defendant—

(i) fails to appear at the hearing; or

(ii) appears at the hearing (whether personally or by a solicitor) for the purpose only of requesting that time be allowed for the payment of such amount; or

(b) the judge in any special circumstances so directs.

(2) Notwithstanding anything in paragraph (1), in an undefended action for damages the judge may direct that the plaintiffs costs shall be in accordance with Table 1 in Part I or Appendix 2 instead of Table 3 thereof and it shall always be within the judge's discretion to allow counsel.

### **Costs of party appearing in person**

**12.** The amount of any costs awarded to a party other than a solicitor appearing in person in accordance with section 1 of the Litigants in Person (Costs and Expenses) Act 1975(**38**) shall be such as may be determined by the judge.

### **Additional services**

**13.** Where it is necessary to serve more than one copy of a civil bill or other document initiating proceedings there shall be payable for each copy after the first a further sum of 20p.

### **Costs payable in settlement**

**14.** Where a defendant pays the amount due or delivers up possession, as the case may be, within fourteen days from service of the civil bill and also within that period pays fifty per centum of the solicitor's costs in column 2 of Table 3 of Part I or of Table 1 of Part III of Appendix 2, as appropriate, together with all the plaintiffs outlay including counsel's fee (if any) properly incurred to date of settlement he shall not be liable for any further costs.

### **Lands not separately rated**

**15.** In any proceedings for recovery of possession of lands not separately valued for rating the judge may make any apportionments of valuation necessary for the determination of the costs applicable.

### **Fee for preparation of brief**

**16.** The solicitor's remuneration provided by the scales in Appendix 2 include a fee for the preparation of a brief to counsel (if any).

### **Service fees for postal service**

**17.** Where service of a civil bill or other document has been effected by post under Rule 3(2) (b) of Order 6, the solicitor shall be entitled to a fee of £1 inclusive of outlay in lieu of the fees payable to process servers.

### **Injunctions claimed other than in equity proceedings**

18. In proceedings where an injunction is claimed under Article 13 of the Order, not being proceedings within the equity jurisdiction, the costs in relation to the hearing of the claim for an injunction shall be in the discretion of the judge, both as to incidence and amount.

### **Proceedings in which the amount awarded does not exceed £500**

19.—(1) In any proceedings before a judge, other than excepted proceedings within the meaning of Order 25, Rule 15(1), if the award by the judge does not exceed—

- (a) £500, only half of the amount of the scale costs shall be allowed, unless the judge otherwise orders; or
- (b) £200, no costs, save those which would have been awarded under Order 26 Rule 9, shall be allowed if the judge is satisfied that the proceedings should have been brought by way of arbitration under Article 30 of the Order.

(2) In any proceedings before a circuit registrar, if the award by the circuit registrar does not exceed £200, no costs, save those which would have been awarded under Order 26, Rule 9, shall be allowed if the circuit registrar is satisfied that the proceedings should have been brought by way of arbitration under Article 30 of the Order.

## **ORDER 56**

### **County Court seal and authentication of documents**

#### **County Court seal**

1. For every county court division there shall be a county court seal which shall incorporate the name of the division.

#### **Custody of the seal**

2. The county court seal shall be kept by and in the custody of the chief clerk.

#### **Affixing and authentication of the seal**

3.—(1) The seal shall be affixed by or under the direction of the chief clerk to any document required by these Rules or any other enactment to be sealed with the county court seal.

(2) Every seal affixed to any document shall, subject to paragraphs (3) and (4), be authenticated by the signature of the chief clerk or registrar and no authentication of the seal shall be necessary.

(3) Where any order directs that the circuit registrar or other officer shall do any act or take any accounts or inquiries, the seal on such order shall be authenticated by the signature of the chief clerk, as the case may be, and no further authentication shall be necessary.

(4) In the event of sickness or absence of the chief clerk, the seal may be authenticated and any certificate required by these Rules may be given by such officer of the court as the judge may from time to time direct.

#### **Documents to be sealed**

4. The county court seal shall be affixed to—

- (a) every document which immediately prior to the passing of the Order was required to be sealed with the county court seal;



- (b) every document which under the provisions of these Rules or any other enactment is required to be sealed with the county court seal; and
- (c) every document issued by a county court for which a form marked with the word “seal” is prescribed in Appendix 1.

## ORDER 57

### Penal and disciplinary provisions

#### **Proceedings on complaint of a contempt of court**

1.—(1) Where it is alleged that any person has—

- (a) wilfully insulted or acted contumaciously towards the judge, or any witness, or any officer of the court during his sitting or attendance in court or in chambers or at any hearing before an officer of the court, or in going to or returning from the court or chambers or a hearing before an officer of the court;
- (b) wilfully interrupted the proceedings of a county court or otherwise misbehaved in court or in chambers or at a hearing before an officer of the court; or
- (c) been duly summoned and has refused or neglected without sufficient cause to appear or to produce any documents or has refused to be sworn or to give evidence;

and the alleged offender has not been taken into custody and brought before the judge or dealt with summarily by the judge, the circuit registrar, chief clerk or other officer of the Northern Ireland Court Service acting as clerk of the court—

- (i) shall issue a summons in Form 264 which shall be served by a process server on the alleged offender personally at least two days before the return day appointed in such summons; or
- (ii) if the judge So directs, shall forthwith issue a warrant in Form 265 addressed to a superintendent of the Royal Ulster Constabulary for the apprehension and bringing before the court of the alleged offender.

(2) The fee payable to a process server in respect of the service of a summons under paragraph (1) shall be payable by the chief clerk and chargeable as part of his office expenses.

(3) Where a person has been found to have committed any offence mentioned in paragraph (1), an order in Form 266 may be made against him.

(4) After imposing a fine on or committing to prison any person for an offence mentioned in paragraph (1), the judge may direct the chief clerk to give notice to such person that if he has any cause to show why an order should not have been made against him, he may show cause in person or by affidavit or otherwise on a day to be named in the notice, and the judge after considering the cause may make such order as he thinks fit.

#### **Proceedings consequent on order under Rule 1**

2. A warrant for committal to prison under an order made under Rule 1 shall be in Form 267 and all other warrants shall be in the forms specified in the Fines Act (Ireland) 1851(39).

#### **Revocation of order of committal**

3. An order revoking an order under Rule 1 committing a person to prison and, if he is already in custody, ordering his discharge, shall be in Form 268 with such modifications as may be necessary,

and the chief clerk shall deliver a sealed copy of the order by post or otherwise to the governor of the prison in which the person is held in custody.

#### **Repayment of fine**

4. If, in any case, after a fine has been paid, the person on whom it was imposed shows cause which satisfies the judge that, if that cause had been shown at an earlier date, he would not have imposed a fine, or would have imposed a smaller fine, or would not have ordered payment or full payment to be enforced, the judge may order the fine or any part thereof to be repaid.

#### **Decrees enforceable by committal**

5.—(1) Decrees in the nature of an injunction and all decrees within the competence of the court which, if they were made in an action or matter in the High Court could in that court be enforced by committal may in accordance with this Order be enforced, by order of the judge, by committal.

(2) Any such decree which requires any person to do an act thereby ordered shall state the time, or the time after service of the decree, within which the act is to be done.

#### **Notice of motion for decree enforceable by committal**

6. A notice of motion for a decree which may be enforced by committal may be in Form 269 and shall, except where the judge otherwise determines, be supported by affidavit of the party making the application.

#### **Procedure for enforcement**

7.—(1) When a decree enforceable by committal has been made for the benefit of one party (in this Rule called “the applicant”) against another party (in this Rule called “the respondent”) the chief clerk shall, on the application of the applicant, endorse on a certified copy of the decree a notice in Form 270 and the copy so endorsed shall be served on the respondent personally.

(2) If the respondent fails to obey the decree, the applicant shall at least two days before the hearing serve on the respondent personally a notice in Form 271 and shall send to the chief clerk a notice in Form 272.

(3) The judge may hear such application at any time and place he considers suitable.

(4) On the day named in the notice, the judge, on being satisfied that the respondent has failed to obey the decree and, if the respondent does not appear, that the endorsed copy of the decree and the notice have been served on him, may order a warrant of committal to issue; but the judge may, if he considers it necessary, hear the application *ex parte* and make such order thereon as he thinks fit.

(5) The order for the issue of a warrant shall be in Form 273 and the warrant shall be in Form 274.

#### **Application as to discharge from custody**

8.—(1) The judge may, at any time and at any place, hear any application as to the discharge of any person in custody committed for contempt of court and may make such order regarding that person as he might make if sitting in open court.

(2) Notice of an application for discharge from custody of a person committed for contempt of court shall be in Form 275 and shall be served on the opposite party (if any) at least two days before the day on which the application is intended to be heard, and an order for the discharge from custody of a person so committed shall be in Form 276; but the judge may, if he considers it necessary, hear the application *ex parte* and make such order thereon as he thinks fit.

## Procedure for grant of sequestration order

9.—(1) Rule 6 and paragraphs (1) to (4) of Rule 7 shall apply to motions for the grant of an order for sequestration against an individual under Article 111 of the Judgments Enforcement (Northern Ireland) Order 1981 or against a company under Article 113 of that Order with the modification that in the said Rules and in Forms 269, 270, 271 and 272 for a reference to committal or to an order of committal there shall be substituted a reference to sequestration or to an order for sequestration as the case may be.

(2) A sequestration order granted against an individual shall be in Form 277 and that against a company shall be in Form 278.

## ORDER 58

### Interpretation, revocations, extent, commencement and citation (Appendix 3)

#### Interpretation

1.—(1) In these Rules, the expression—

“Court Funds Rules” means rules made by the Lord Chancellor, with the concurrence of the Treasury, under section 82 of the Judicature (Northern Ireland) Act 1978;

“court messenger” means a person appointed under section 26 of the Administration of Justice Act (Northern Ireland) 1954(40);

“enactment” means a statute or statutory instrument made under a statute, by whatsoever Parliament passed or by whomsoever made, for the time being in force in Northern Ireland;

“entry day” has the meaning assigned to that expression by Order 8, Rule 1;

“folio” means seventy-two words, each single figure being reckoned as a word;

“statutory instrument” includes an Order in Council, order or warrant (other than an order made or a warrant issued by a court), scheme, rule, regulation or bye-law;

“the Order” means the County Courts (Northern Ireland) Order 1980;

“the Crown Proceedings Act” means the Crown Proceedings Act 1947(41) as extended to Northern Ireland by the Northern Ireland (Crown Proceedings) Order 1949(42).

(2) References in these Rules to service by registered post (however expressed) shall, unless the contrary intention appears, be construed as including references to service by means of the recorded delivery service.

(3) In these Rules “decimal currency” means the new currency provided for by the Decimal Currency Act 1967(43) and where it is necessary for the purposes of these Rules to calculate the amount in decimal currency corresponding to an amount in shillings and pence, the calculation shall be made in accordance with Schedule 1 to the Decimal Currency Act 1969(44).

#### Forms

2. The general forms set forth in Appendix "I shall, subject as aforesaid, be used in proceedings under these Rules to which they are relevant.

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(40) 1954 c. 9 (N.I.).

(41) 1947 c. 44.

(42) S.I. 1949/1836 (I p. 1261)

(43) 1967 c. 47.

(44) 1969 c. 19.

### **Application to Crown**

3. Save as is otherwise provided by the Crown Proceedings Act or by these Rules—
- (a) these Rules and any County Court Rules for the time being in force shall, so far as may be, apply to all proceedings by or against the Crown in like manner as they apply to proceedings between subjects; and
  - (b) proceedings by or against the Crown shall, so far as may be, take the same form as proceedings between subjects.

### **Revocations**

4. The Statutory Rules set out in columns 1 and 2 of Appendix 3 are revoked to the extent specified in column 3 of that Appendix.

### **Rules apply to civil proceedings except as otherwise provided**

5. Without prejudice to Part II of Order 32, in its application to cases stated under Article 61 of the Order on appeal from magistrates' courts, these Rules shall apply only to civil proceedings.

### **Citation and commencement**

6. These Rules may be cited as the County Court Rules (Northern Ireland) 1981 and shall come into operation on 12th October 1981.

We, the undersigned members of the County Court Rules Committee, having by virtue of the powers vested in us in this behalf made the foregoing rules, do hereby certify the same under our hand and submit them to the Lord Chancellor accordingly.

*JAMES. A. BROWN  
J. P. HIGGINS  
R. T. ROWLAND  
D. W. R. McALISTER  
TIMOTHY T. FERRISS  
C. NELSON M. ROUNTREE  
T. F. GLASS  
HAROLD McKEE  
HARRY COLL  
H. COLLEN*

Dated 5th June 1981

After consultation with the Lord Chief Justice I allow these rules which shall come into operation on 12th October 1981.

Dated 2nd July 1981

*HAILSHAM OF ST. MARYLEBONE, C.*