
STATUTORY RULES OF NORTHERN IRELAND

1981 No. 225

County Court Rules (Northern Ireland) 1981

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.