STATUTORY RULES OF NORTHERN IRELAND

1981 No. 225

County Court Rules (Northern Ireland) 1981

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(**1**), 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.

(**1**) 1971 c. 36 (N.I.).

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 heating 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 arty 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 I 97 I, 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 my 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 parry 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 tails 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.