
STATUTORY RULES OF NORTHERN IRELAND

1981 No. 225

County Court Rules (Northern Ireland) 1981

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.