

1969 No. 585 (L. 9)

COUNTY COURTS

PROCEDURE

The County Court (Amendment) Rules 1969

Made - - - - - 21st April 1969
 Coming into Operation 23rd June 1969

1. (1) These Rules may be cited as the County Court (Amendment) Rules 1969.

(2) In these Rules an Order and Rule referred to by number means the Order and Rule so numbered in the County Court Rules 1936(a), as amended(b), and a Form referred to by number means the Form so numbered in Appendix A to those Rules.

(3) The Interpretation Act 1889(c) shall apply for the interpretation of these Rules as it applies for the interpretation of an Act of Parliament.

2. Order 2, Rule 1, shall be amended as follows:—

(1) The following paragraph shall be inserted after paragraph (3):—

“(4) Where the plaintiff’s claim is founded on tort and the defendant or each of the defendants does not reside or carry on business in England or Wales, paragraph (1)(a) of this Rule shall have effect as if for the words ‘the defendant or one of the defendants’ there were substituted the words ‘the plaintiff or one of the plaintiffs’.”

(2) Paragraph (4) shall stand as paragraph (5).

3. Order 8, Rule 41, shall be amended as follows:—

(1) After paragraph (e) there shall be inserted the following paragraph:—

“(f) the claim is founded on a tort committed in England or Wales, or”

(2) Paragraphs (f) and (g) shall stand as paragraph (g) and (h) respectively.

4. Order 11 shall be amended as follows:—

(1) After Rule 3 there shall be inserted the following Rule:—

“4.—(1) Where a payment under Rule 1 of this Order is made by a defendant who makes a counterclaim against the plaintiff, it shall be accompanied by a notice stating, if it be the case, that in making the payment the defendant has taken into

Payment by
defendant
counter-
claiming.

(a) S.R. & O. 1936/626 (1936 I, p. 282).

(b) The relevant amending instruments are S.R. & O. 1938/18, 731, 1475, 1939/815, S.I. 1950/1231, 1953/1728, 1955/1799, 1956/471, 1243, 1957/174, 1136, 1958/2226, 1960/1275, 1962/1293, 1964/353, 1974, 1965/2147, 1967/276 (1938 I, pp. 977, 986, 990; 1939 I, p. 469; 1950 I, p. 400; 1953 I, p. 404; 1955 I, p. 530; 1956 I, pp. 539, 541; 1957 I, pp. 512, 517; 1958 I, p. 372; 1960 I, p. 809; 1962 II, p. 1383; 1964 I, p. 543; III, p. 4477; 1965 III, p. 6292; 1967 I, p. 990).

(c) 1889 c. 63.

account and intends to satisfy the counterclaim or, as the case may be, such of the causes of action joined in the counterclaim as may be specified in the notice.

(2) For the purposes of Rule 2 of this Order a notice referred to in the foregoing paragraph shall be deemed to be such a notice as is mentioned in that Rule.

(3) Where a plaintiff elects to accept an amount paid into court in satisfaction of his claim or the cause or causes of action to which the payment relates and the payment was accompanied by such a notice as is referred to in paragraph (1) of this Rule, then, if the proceedings on the claim are stayed under Rule 7 or 9 of this Order, the proceedings on the counterclaim or, as the case may be, such of the causes of action joined in the counterclaim as are specified in the notice shall also be stayed."

(2) In Rule 14 for the words "Rules 1 to 3, 5 and 6" there shall be substituted the words "Rules 1 to 6".

5. Order 15 shall be amended as follows :—

(1) In Rule 2 for the words "only on the service of the process on him" there shall be substituted the words "on the date of the amendment".

(2) Rule 3 shall stand as paragraph (1) of that Rule and the following paragraph shall be added at the end :—

"(2) Where an application for an amendment is made after any relevant period of limitation has expired since the issue of the originating process, the court may nevertheless allow the amendment if it is such as the High Court would have power to allow in a like case".

(3) In the marginal note to Rule 5 for the word "unliquidated" there shall be substituted the word "amended".

6. In Order 16, Rule 13(1), for the words "send to" there shall be substituted the word "notify", and the words "notice in Form 97" and the marginal note "Form 97" shall be omitted.

7. Order 25, Rule 68(1), shall be amended as follows :—

(1) After the words "if the order is" there shall be inserted the words "for the oral examination of a judgment debtor or".

(2) The following paragraph shall be added at the end :—

"For the purposes of this paragraph a notice in Form 140 shall be treated as being indorsed on a copy of an order if it is incorporated in the same document as the copy".

8. In Order 35, Rule 11(1), for the words "on the main mast or on the single mast of the ship" there shall be substituted the words "on any mast of the ship or on the outside of any suitable part of the ship's superstructure".

9. Order 37, Rule 4, shall be amended as follows :—

(1) For the marginal note there shall be substituted the words "Non-compliance with Rules".

(2) For paragraph (1) there shall be substituted the following paragraph:

“(1) Where there has been a failure to comply with any requirement of these Rules, the failure shall be treated as an irregularity and shall not nullify the proceedings, but the court may set aside the proceedings wholly or in part or exercise its powers under these Rules to allow such amendments, if any, and to give such directions, if any, as it thinks fit”.

(3) The following paragraph shall be added at the end of the Rule:—

“(4) The expression ‘proceedings’ in paragraph (1), and where it first occurs in paragraph (2), includes any step taken in the proceedings and any document, judgment or order therein”.

10. Order 46 shall be amended as follows:—

(1) The following sub-paragraph shall be added to Rule 10(3):—

“(c) Where such an offer as is mentioned in sub-paragraph (b) is made on Form 18A but the plaintiff elects not to accept it, the court may, if the hirer does not attend the hearing, treat the form as evidence of the facts stated therein for the purposes of sections 35(4)(b) and 36(1) of the Act”.

(2) Rule 17 shall be amended as follows:—

(a) The following paragraph shall be inserted after paragraph (1):—

“(1A) An application for the registration of a maintenance order in a magistrates’ court or for an attachment of earnings order may be heard and determined by the registrar.”

(b) In paragraph (2) for the words from “shall be made” to “the office of that court” there shall be substituted the words “may be made—

(a) on the making of the maintenance order or an order varying the maintenance order, or

(b) at any other time by lodging in the office of the court in which the order was made.”

(c) Sub-paragraphs (a) to (f) of paragraph (2) shall stand as sub-paragraphs (i) to (vi) respectively.

(d) In paragraph (2) the word “and” shall be deleted at the end of sub-paragraph (v) and inserted at the end of sub-paragraph (vi) and the following sub-paragraph shall be added:—“(vii) the date of birth of each child named in the order”.

(e) In paragraph (3)(b) after the words “the applicant’s affidavit” there shall be inserted the words “if any”.

(f) In paragraphs (8) and (9) the words “to the judge or, with the leave of the judge, to the registrar” shall be omitted.

11. Order 47 shall be amended as follows:—

(1) In Rule 17 the following provisions shall be omitted:—

(1) Paragraph (2) and the figure “(1)” at the beginning of the Rule.

(2) The words “or registrar” in the marginal note.

(2) In Rule 38(1) for the words "one clear day's notice" there shall be substituted the words "3 clear days' notice".

(3) The following Rule shall be substituted for Rule 40:—

Taxation
between
solicitor
and client.

"40.—(1) In this Rule references to a taxation of costs as between solicitor and client include references to—

- (a) taxation of a solicitor's bill to his own client, and
- (b) taxation on the common fund basis, that is to say, taxation as between solicitor and client where the costs are to be paid out of a common fund in which the client and others are interested.

(2) Where an order has been made for the taxation of costs as between solicitor and client, the solicitor shall lodge his bill within 14 days of the making of the order and Rule 38(4) of this Order (except paragraph (b)) shall apply as if for the reference therein to paragraph (1) of that Rule there were substituted a reference to this paragraph.

(3) On receipt of the bill the registrar shall fix a time and place for proceeding with the taxation and shall give to the applicant and any other party entitled to be heard on the taxation not less than 3 clear days' notice of the time and place so fixed.

(4) Subject to paragraphs (5) and (6) of this Rule, the costs as between solicitor and client in an action for the recovery of a sum of money only may be taxed on the scale applicable to the amount claimed.

(5) Rules 8 and 9 of this Order shall apply with the necessary modifications to the determination of the costs as they apply to the determination of costs as between party and party.

(6) Where there is a claim for a sum of money only and a counterclaim for a sum of money only, the costs of and subsequent to the filing of the counterclaim may be taxed on the scale applicable to the claim or that applicable to the counterclaim, whichever is the higher:

Provided that the costs of work done solely in connection with the claim shall not be on a scale higher than that applicable to the claim and the costs of work done solely in connection with the counterclaim shall not be on a scale higher than that applicable to the counterclaim.

(7) In garnishee proceedings the costs as between solicitor and client may be taxed on the scale applicable to the amount claimed by the judgment creditor.

(8) The judge by whom any order is made for the taxation of costs as between solicitor and client may, after affording to the solicitor an opportunity of making any representations that he desires to make,—

- (a) determine the scale on which the costs are to be taxed under the preceding paragraphs of this Rule, and
- (b) exercise any discretion, whether as to scale or any other matter, give any direction and grant any certificate that the judge could have exercised, given or granted in relation to costs as between party and party.

(9) On a taxation of costs as between solicitor and client the registrar shall not be bound to follow any determination of the

judge or registrar in relation to the costs as between party and party and accordingly, subject to any determination made under paragraph (8), the registrar may—

- (a) exercise any of the powers conferred on the judge by that paragraph ;
- (b) allow items disallowed as between party and party, and
- (c) allow a higher sum in respect of any item than the sum allowed as between party and party, not exceeding the maximum sum prescribed for that item in the scale on which the costs are being taxed.

(10) The costs of a taxation under the Solicitors Act 1957 shall be dealt with by the registrar in accordance with the provisions of that Act and shall be added to or deducted from the amount certified to be due.” 1957 c. 27.

(4) The following Rule shall be added after Rule 48 :—

“49. Subject to the provisions of this Order and to section 73(4) of the Solicitors Act 1957, Order 62, Rules 28, 29 and 31, of the Rules of the Supreme Court shall apply, with the necessary modifications, to the taxation of costs in the county court as they apply to the taxation of costs in the High Court ”. Bases of taxation.

12. In each of the following provisions for the words “fold it as indicated, stamp it, and post it” there shall be substituted the words “send it by prepaid post” :—

- (a) paragraph (4) of the Instructions on Form 18,
- (b) paragraph (4) of the Instructions on Form 19,
- (c) paragraph (2) of the Instructions on Form 20,
- (d) paragraph (2) of the Instructions on Form 21(1),
- (e) paragraph (3) of the Instructions on Form 21(2), and
- (f) paragraph (4) of the Instructions on Form 22.

13. Form 18A shall be amended as follows :—

- (1) In the first Note the words “as to your means.” shall be omitted.
- (2) In the sentence beginning “Add, in an action” for the words “applies I understand that” there shall be substituted the following words :—

“applies—

6. Are the goods in your possession?.....
I understand that”.

14. In paragraph 2(e) of Form 35 for the words “by posting the same on the previous day” there shall be substituted the words “by posting the same by first class mail on the previous day [or by second class mail on the day of 19]”.

15. At the end of paragraph (1) of Form 61 there shall be inserted the following words :—

“The defendant states that the goods are [not] in his possession”.

16. In Form 65 after the first paragraph there shall be inserted the following paragraph :—

“[In making this payment the defendant has taken into account and intends to satisfy his counterclaim] [or his cause of action for]”.

17. Form 97 shall be revoked.
 18. The following form shall be substituted for Form 150:—

“ 150

ORDER FOR ORAL EXAMINATION OF JUDGMENT DEBTOR

[General Title—Form 1]

Order 25,
 Rules 2(3),
 68(1).

Seal

To
 of

WHEREAS the Plaintiff obtained a judgment [*or order*] against the above-named Defendant in this Court [*or as the case may be*] on the day of 19 , for the payment of £ : : for debt [*or damages*] and costs, of which £ : : still remains unpaid.

YOU ARE HEREBY ORDERED to attend before the Registrar at the office of this Court at on day the day of 19 , at o'clock [*or before the Registrar of the County Court at such time and place as he may appoint*], and be orally examined as to any and what debts are owing to you and whether you have any and what other property or means of satisfying the said judgment [*or order*], and to produce at such time and place any books or documents in your possession or power containing particulars relating to your property or means.

AND IT IS FURTHER ORDERED that the costs of this application and of the examination thereunder be in the discretion of the said Registrar.

AND TAKE NOTICE that unless you obey the directions contained in this order you will be guilty of contempt of Court and will be liable to be committed to prison.

Dated this day of 19 .

Registrar

This order was made on the application of
 of
 [solicitor[s] for] the Plaintiff

Travelling expenses to be paid or tendered to the said

Defendant £ : :

[I appoint day, the day of 19 , at o'clock, at the office of the County Court at for this examination.

Registrar of the County Court].”

19. Notwithstanding anything in Rule 12, the Forms mentioned in that Rule may continue to be used in the form hitherto prescribed until the Lord Chancellor otherwise directs.

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 102 of the County Courts Act 1959(a), 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.

Owen Temple-Morris.
D. O. McKee.
S. Granville Smith.
Connolly H. Gage.
Hugh Mais
W. Ralph Davies
E. A. Everett.
Brian D. Bush.
Arthur Figgis.
A. F. Stapleton Cotton.
D. A. Marshall.

I allow these Rules, which shall come into force on 23rd June 1969.

Dated 21st April 1969.

Gardiner, C.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules amend the County Court Rules so as—

(1) to give the county court power to allow process to be served out of the jurisdiction where the claim is founded on a tort committed in England or Wales (Rules 2 and 3);

(2) to permit a counterclaiming defendant who pays money into court in satisfaction of the plaintiff's claim to state that he has taken his counterclaim into account in calculating the amount of the payment (Rules 4 and 16);

(3) to provide that a person ordered to be added or substituted as a defendant shall become a party on the date of amendment and to enable the county court to allow certain amendments, notwithstanding that any relevant period of limitation has expired (Rule 5);

(4) to prescribe a new form of order for the oral examination of a judgment debtor (Rules 7 and 18);

(5) to regulate the effect of non-compliance with any requirement of the Rules (Rule 9);

(6) to enable the court in an action for the recovery of goods under the Hire-Purchase Act 1965 to treat the hirer's form of admission as evidence that the goods are in his possession (Rules 10(1), 13 and 15);

(7) to modify the procedure under the Maintenance Orders Act 1958 (Rule 10(2));

(8) to make fresh provision for the taxation of costs as between solicitor and client and as to the bases of taxation (Rule 11);

(9) to make minor alterations with regard to the service of process and other matters (Rules 6, 8, 12, 14 and 17).