1983 No. 5

SUPREME COURT

PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (Amendment) 1983

Made . . . . . *14th January 1983*

Coming into operation . . . . *28th February 1983*

To be laid before Parliament

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978(a) to make, amend or revoke rules regulating the pleading, practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby, with the concurrence of the Lord Chancellor, exercise those powers and all other powers enabling us in that behalf as follows:

Citation and commencement

1.—(1) These rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment) 1983 and shall come into operation on 28th February 1983.

(2) In these rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court (Northern Ireland) 1980(b) and, unless the context otherwise requires, a form referred to by number means the form so numbered in Appendix A to the Rules.

Service of originating process: general provisions

2. The following paragraph shall be added to Order 10, rule 1:—

(7) Every copy of a writ for service on a defendant shall be sealed with the seal of the office of the Supreme Court out of which the writ was issued.

Investment of money in court

3. Order 22, rule 12 shall be amended by inserting after the words "any manner specified in" the words "Part I and" and by substituting for the words "restricted in their operation by" the words "supplemented by the provisions of".

Application under section 32(1) of Administration of Justice Act 1970

4. Order 24, rule 6(2), shall be amended as follows:—

(1) After the word "summons" there shall be inserted the words "in Form No. 28A in Appendix A".

(2) The word "personally" shall be deleted.

Order for hearing or trial

5. Order 28, rule 9 shall be amended as follows:—

(1) In paragraph (1) for the words from "an order for the hearing" to the end,

(a) 1978 c. 23
(b) S.R. 1980 No. 346; the relevant amending instruments are S.R. 1981 No. 224 and 1982 No. 217

there shall be substituted the words "such order as to the hearing of the cause or matter as may be appropriate.".

(2) Paragraph (2) shall be omitted.

Receivers

6. Order 30 shall be amended by substituting for rules 2 to 6 the following rules:—

"*Giving of security by receiver*

2.—(1) A judgment or order directing the appointment of a receiver may include such direction as the Court may think fit as to the giving of security by the person appointed.

(2) Where by virtue of any judgment or order appointing a person named therein to be receiver a person is required to give security in accordance with this rule, he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee.

(4) The guarantee must be filed in the appropriate office and it shall be kept as of record until duly vacated.

Remuneration of receiver

3. A person appointed receiver shall be allowed such proper remuneration, if any, as may be authorised by the Court and the Court may direct that such remuneration shall be fixed by reference to such scales or rates of professional charges as it thinks fit.

Service of order and notice

4. A copy of the judgment or order appointing a receiver shall be served by the party having conduct of the proceedings on the receiver and all other parties to the cause or matter in which the receiver has been appointed.

Receiver's accounts

5.—(1) A receiver shall submit such accounts to such parties at such intervals or on such dates as the Court may direct.

(2) Any party to whom a receiver is required to submit accounts may, on giving reasonable notice to the receiver, inspect, either personally or by an agent, the books and other papers relating to such accounts.

(3) Any party who is dissatisfied with the accounts of the receiver may give notice specifying the item or items to which objection is taken and requiring the receiver within not less than 14 days to lodge his accounts with the Court and a copy of such notice shall be lodged in the appropriate office.

(4) Following an examination by or on behalf of the Court of an item or items in an account to which objection is taken the result of such examination must be certified by a master and an order may thereupon be made as to the incidence of any costs or expenses incurred.

Payment into court by receiver

6. The Court may fix the amounts and frequency of payments into court to be made by a receiver.

Default by receiver

7.—(1) Where a receiver fails to attend for the examination of his account or fails to submit any account, provide access to any books or papers, provide or do any other thing which he is required to provide or do, he and all of the parties in the

cause or matter in which he was appointed may be required to attend in chambers to show cause for the failure, and the Court may, either in chambers or after adjournment into court, give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to paragraph (1), where a receiver fails to attend for the examination of any account of his or fails to submit any account or fails to pay into court on the date fixed by the Court any sum required to be so paid, the Court may disallow any remuneration claimed by the receiver and may, where he has failed to pay any such sum into court, charge him with interest at the rate currently payable in respect of judgment debts in the High Court on that sum while in his possession as receiver.

Directions to receiver

8. A receiver may at any time request the Court to give him directions and such request shall state in writing the matters with regard to which directions are required.''

Sale, etc., of land by order of the Court

7. Order 31 shall be amended as follows:—

(1) In paragraph (1) of rule 2 there shall be substituted for the words ''under paragraph (4)'' the word ''subsequently''.

(2) Paragraphs (2) and (3) of rule 2 shall be omitted.

(3) Paragraph (4) of rule 2 shall be re-numbered (2) and there shall be substituted for the words ''On the hearing of the summons the Court'' the words ''The Court''.

(4) In paragraph (2) of rule 3 there shall be substituted for the word ''at'' the word ''in''.

Order or judgment for amount of damages

8. Order 37 shall be amended as follows:—

(1) In the title of rule 2 for the word ''Certificate'' there shall be substituted the word ''Order''.

(2) In rule 2 the following paragraph shall be substituted for paragraph (*a*)—

''(*a*) in the Chancery Division the Master shall make an order for payment of the damages so assessed under Order 44, rule 11;''.

Writs of subpoena

9. Order 38, rule 15, shall be amended by inserting after the words ''issue of the writ'' the words ''and not less than four days, or such other period as the Court may fix, before the day on which attendance before the Court is required.''

Evidence by deposition

10. Order 39, rule 11, shall be amended by inserting at the end the following paragraph:—

''(5) Where a deposition is filed in the Central Office and the cause or matter is proceeding in the Chancery Division, a copy of the deposition shall be made in the Central Office and transmitted to the Chancery Office.''

Judgments

11. Order 42, rule 9, shall be amended as follows:—

(1) In paragraph (2) there shall be substituted for the figure ''14'' the figure ''12''.

(2) The following paragraph shall be substituted for paragraph (3):—

"(3) Where an order charging land under Article 46 of the Judgments Enforcement (Northern Ireland) Order 1981 or a charging order on funds, stock or shares under Article 58 of the said Order provides for the payment of interest on any sum secured by the order, such interest shall be payable at the rate specified in the judgment in respect of which the order was made or, where the rate of interest to be paid is not specified in the judgment, at the rate currently payable in respect of a judgment under paragraph (2), from the date of the registration of the order in the case of an order charging land or from the date of the order in the case of a charging order on funds, stock or shares, and for the period during which the charge is subsisting."

Accounts and Inquiries

12. Order 43 shall be amended as follows:—

(1) In the heading to rule 3, by inserting at the end the words "or making inquiry".

(2) In paragraph (1) of rule 3, by inserting after the words "account to be taken" the words "or inquiry to be made" and after the words "taken or vouched" the words "or the inquiry is to be made".

(3) In paragraph (2) of rule 3, by substituting for the words "taking the account" the words "taking an account."

(4) In rule 9, by substituting for the words from "the same manner" to "in such other" the word "such".

Proceedings under Judgments and Orders: Chancery Division

13. For Order 44 there shall be substituted the Order set out in Schedule A hereto.

Appeals from decision of masters, etc.

14. Order 58, rule 1(1), shall be amended by deleting the words "Without prejudice to Order 44, rule 23, and".

Procedure on remittal and removal

15. Order 78 shall be amended as follows:—

(1) In rule 8(*b*), the words "and the original documents other than the affidavit referred to in rule 2(3)" shall be omitted and for the word "principal" there shall be substituted the word "chief".

(2) In rule 9(2), for the figure "13" there shall be substituted the figure "11" and for the figure "1976" the figure "1981".

Specific performance

16. Order 86, rule 1(1)(*a*) shall be amended by substituting for the words "purchase or exchange" the words "purchase, exchange, mortgage or charge".

Official Solicitor

17. For Order 110 there shall be substituted the Order set out in Schedule B hereto.

Forms

18. In Appendix A the Form in Schedule C hereto shall be inserted as Form 28A.

Dated the 16th day of December 1982.

Lowry
J. B. E. Hutton
R. D. Carswell
James McFarland

I concur

Hailsham of St. Marylebone, C.

Dated the 14th day of January 1983

ORDER 44

Proceedings under Judgments and Orders: Chancery Division

Application to Orders

1. In this Order references to a judgment include references to an order.

Service of notice of judgment on person not a party

2.—(1) Where in an action for—

(*a*) the administration of the estate of a deceased person, or

(*b*) the execution of a trust, or

(*c*) the sale of any property,

the Court gives a judgment or makes a direction which affects persons not parties to the action, the Court may when giving the judgment or at any stage of the proceedings under the judgment direct notice of the judgment to be served on any such person and any person so served shall, subject to paragraph (4), be bound by the judgment as if he had originally been a party to the action.

(2) If it appears that it is not practicable to serve notice of a judgment on a person directed to be served the Court may dispense with service and may also order that such person be bound by the judgment.

(3) Every notice of a judgment for service under this rule must be indorsed with a memorandum in Form No. 36 in Appendix A.

(4) A person served with notice of a judgment may, within one month after service of the notice on him and without entering an appearance apply to the court to discharge, vary or add to the judgment.

(5) A person served with notice of a judgment may, after entering an appearance, attend the proceedings under the judgment.

(6) Order 12, rules 1 to 4, shall apply in relation to the entry of appearance to a notice of judgment as if the judgment were a writ, the person by whom the notice is served were the plaintiff and the person on whom it is served were a defendant.

Directions by the Court

3.—(1) Where a judgment given in a cause or matter in the Chancery Division contains directions which make it necessary to proceed in chambers under the judgment the Court may, when giving the judgment or at any time during proceedings under the judgment, give further directions for the conduct of those proceedings, including, in particular, directions with respect to—

(*a*) the manner in which any account or inquiry is to be prosecuted,

(*b*) the evidence to be adduced in support thereof,

(*c*) the preparation and service on the parties to be bound thereby of the draft of any deed or other instrument which is directed by the judgment to be settled by the Court and the service of any objections to the draft,

(*d*) without prejudice to Order 15, rule 18, the parties required to attend all or any part of the proceedings,

(*e*) the representation by the same solicitor of parties who constitute a class and by different solicitors of parties who ought to be separately represented, and

(*f*) the time within which each proceeding is to be taken, and may fix a day or days for the further attendance of the parties.

(2) The Court may revoke or vary any directions given under this rule.

Application of rules 5 to 8

4. Rules 5 to 8 apply—

(*a*) where in proceedings for the administration under the direction of the Court of the estate of a deceased person the judgment directs any account of debts or other liabilities

of the deceased's estate to be taken or any inquiry for next of kin or other ascertained claimants to be made, and

(*b*) where in proceedings for the execution under the direction of the Court of a trust the judgment directs any such inquiry to be made,

and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs an account of debts or other liabilities to be taken or any inquiry to be made.

Advertisements for creditors and other claimants

5. The Court may, when giving a judgment or at any stage of proceedings under a judgment, give directions for the issue of advertisements for creditors or other claimants and may fix the time within which creditors and claimants may respond.

Examination of claims

6.—(1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must—

(*a*) examine the claims of persons claiming to be creditors of the estate,

(*b*) determine, so far as he is able, to which of such claims the estate is liable, and

(*c*) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them and listing all the other debts of the deceased which are or may still be due.

(2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must—

(*a*) examine the claims,

(*b*) determine, so far as he is able, which of them are valid, and

(*c*) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them.

(3) If the personal representatives or trustees concerned are not the parties directed by the Court to examine claims, they must join with the party directed to examine them in making the affidavit required by this rule.

Adjudication on claims

7. For the purpose of adjudicating on claims the Court may—

(*a*) direct any claim to be investigated in such manner as it thinks fit,

(*b*) require any claimant to attend and prove his claim or to furnish further particulars or evidence of it, or

(*c*) allow any claim after or without proof thereof.

Notice of adjudication

8. The Court shall give directions that there be served on every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of that fact.

Interest on debts

9.—(1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the Court otherwise orders, interest shall be allowed—

(*a*) on any such debt as carries interest, at the rate it carries, and

(*b*) on any other debt, from the date of the judgment at the rate payable on judgment debts at that date.

(2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his debt in accordance with paragraph (1)(*b*) out of any assets which may remain after satisfying the costs of the cause or matter, the debts which have been established and the interest on such of those debts as by law carry interest.

(3) For the purposes of this rule "debt" includes funeral, testamentary or administration expenses and, in relation to expenses incurred after the judgment, for the reference in paragraph (1)(*b*) to the date of the judgment there shall be substituted a reference to the date when the expenses became payable.

Interest on Legacies

10. Where an account of legacies is directed by any judgment, then, subject to any directions contained in the will or codicil in question and to any order made by the Court, interest shall be allowed on each legacy at the rate of £5 per cent. per annum beginning at the expiration of one year after the testator's death.

Master's order

11.—(1) The result of proceedings before a master under a judgment shall be stated in the form of an order.

(2) Subject to any direction of the master under paragraph (3) or otherwise an order under this rule shall have effect as a final order disposing of the cause or matter in which it is made.

(3) An order under this rule shall contain such directions as the master thinks fit as to the further consideration, either in court or in chambers, of the cause or matter in which it is made.

(4) Every order made under this rule shall have immediate binding effect on the parties to the cause or matter in which it is made and copies of the order shall be served on such of the parties as the master may direct.

Appeal against master's order

12.—(1) Subject to paragraph (2), Order 58, rule 1 shall apply to an order under this Order as it applies to any judgment, order or decision of a master.

(2) If the order is to be acted on by the Accountant General or is an order passing a receiver's account, notice of appeal must be issued not later than two clear days after the making of the order and, where the order is to be acted on by the Accountant General, a duplicate of it must be served on the Accountant General as soon as practicable after it is made.

SCHEDULE B Rule 17

ORDER 110

The Official Solicitor

Duties of the Official Solicitor

1.—(1) The Official Solicitor shall conduct such investigations and render such assistance as may be authorised under these Rules or required by the Lord Chief Justice or a court for the purpose of assisting in the due administration of justice.

(2) The Official Solicitor shall perform such duties as were formerly discharged by the General Solicitor for Northern Ireland.

(3) Without prejudice to paragraph (1) the Official Solicitor may discharge any function analogous to those performed by the Official Solicitor in England and Wales, which are not the responsibility of some other officer or person in Northern Ireland.

Costs of Official Solicitor

2.—(1) The costs of the Official Solicitor may be paid out of such fund to which the proceedings relate or by such parties as the court may by order direct.

(2) All costs of the Official Solicitor shall be ascertained on taxation.

SCHEDULE C Rule 18

No. 28A

Summons

(O. 24 r. 6(2))

[*Heading as in cause or matter*]

Let all parties concerned attend the Master in Chambers at the Royal Courts of Justice, Chichester Street, Belfast, on day, the day of 19 , at a.m./p.m. on the hearing of an application on the part of the for an order pursuant to Order 24 rule 6(2) requiring to disclose and produce *(here specify documents required)*

Dated the day of 19 .

This summons was taken out by of , solicitor for

To:

Notice to person in possession of documents who is not a party to the proceedings

If you have no objection to the Court making an order for the production of the medical notes or records or other documents mentioned aboue *you need not attend Court in answer to this summons.*

EXPLANATORY NOTE

(This note is not part of the Rules.)

These rules amend the Rules of the Supreme Court (Northern Ireland) 1980 so as—

(1) to provide for the sealing of copies of writs (rule 2);

(2) to amend the provisions relating to the investment of money in court (rule 3);

(3) to dispense with personal service of certain applications for disclosure of documents under the Administration of Justice Act 1970 (rules 4 and 18);

(4) to amend the provisions relating to the conduct of proceedings in the Chancery Division, including—

(*a*) the taking of accounts,

(*b*) the drafting of orders and

(*c*) the conduct of proceedings following a judgment (rules 5, 6, 7, 8, 10, 11, 12, 13, 14 and 16);

(5) to require a writ of subpoena to be served not later than four days before the hearing, unless the Court otherwise directs (rule 9);

(6) to reduce the rate of interest on judgments from 14 to 12 per cent. and to regulate the rate of interest in orders charging land (rule 11);

(7) to simplify the administration procedure on remittal (rule 15); and

(8) to make provision for the office of Official Solicitor consequential upon that office becoming a full-time one (rule 17).