1964. No. 164 **[NC]**

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (No. 5) 1964

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 7 of the Northern Ireland Act 1962(a) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby exercise those powers and all other powers enabling us in that behalf as follows:—

1. Immediately after rule 10 of Order III of the Rules of the Supreme Court (Northern Ireland) 1936(b), which relates to the indorsement of claim on the writ of summons, there shall be added the following rule:—

"Actions on hire-purchase agreements

11.—(1) Where in an action arising out of a hire-purchase agreement brought against the hirer of the goods to which the agreement relates, or a guarantor, the writ is indorsed with a claim for money, not being—

(*a*) a claim for unliquidated damages; or

(*b*) a claim for no more than the amount of any instalment or instalments of the hire-purchase price which is or are due and unpaid,

then, the indorsement shall state the circumstances in which claim arises.

(2) Subject to paragraph (3), in this rule 'hire-purchase agreement' means an agreement to which the Hire-Purchase Acts (Northern Ireland) 1940 and 1955(c) apply or would apply if the limitation as to the hire-purchase price contained in section 1 of the Hire-Purchase Act (Northern Ireland) 1940 were omitted; and 'goods', 'guarantor', 'hire-purchase price' and 'hirer' have the meanings respectively assigned to them by section 21(1) of that Act.

(3) A hire-purchase agreement shall include an agreement for the sale of goods under which the price is payable by instalments and the property in the goods remains in the seller, notwithstanding that the buyer is in possession of the goods, until such conditions as to the payment of instalments and otherwise as may be specified in the agreement are fulfilled, and the other expressions referred to in paragraph (2) shall be construed accordingly."

2. The following amendments shall be made in Order XIII, which relates to default of appearance:—

(1) In rule 3 immediately after the word "may" there shall be inserted the words "subject to rule 19 of this Order,";

(2) In rule 4 immediately after the word "thereto" there shall be inserted the words "and rule 19 of this Order.";

(a) 10 & 11 Eliz. 2. c. 30. (b) S.R. & O. 1936 (No. 70) II, p. 2559.
(c) 4 & 5 Geo. 6. c. 10 (N.I.) & 1955. c. 12.

(3) In rule 7, immediately after the words "to rule 3" there shall be inserted the words "and rule 19 of this Order";

(4) Immediately after rule 18 there shall be added the following rule:—

"*Application to enter certain judgments in hire-purchase actions*

19.—(1) In an action arising out of a hire-purchase agreement brought against the hirer of the goods to which the agreement relates, or a guarantor, in which the writ is indorsed with a claim for money, not being—

(*a*) a claim for unliquidated damages; or

(*b*) a claim for no more than the amount of any instalment or instalments of the hire-purchase price which is or are due and unpaid,

judgment shall not be entered in default of appearance except with the leave of the Court or a Judge.

(2) An application for the grant of leave under this rule shall be made by summons which—

(*a*) shall not be issued until after the expiration of the time limited for appearing and the production of an affidavit of service of the writ;

(*b*) shall be made returnable not less than two clear days after the service thereof; and

(*c*) shall be in Form No. 1A in Appendix K, with such variations as the circumstances may require.

(3) The summons shall be served on the defendant against whom the application is made either personally or by sending it by recorded delivery to his last known address and the time at which the summons so posted is delivered shall be considered as the time of service thereof.

(4) The plaintiff shall produce to the Court or the Judge hearing an application under this rule the hire-purchase agreement to which the action relates.

(5) If it appears to the Court or the Judge hearing an application under this rule—

(*a*) that the amount claimed by the plaintiff may be a penalty, the application shall be dismissed;

(*b*) that part of that amount may be a penalty, the application shall be dismissed with respect to that part, but the Court or the Judge may give the plaintiff leave to enter judgment with respect to the remainder.

(6) If an application under this rule is dismissed wholly or in part, such dismissal shall be without prejudice to the plaintiff's rights under rule 12 of this Order (which relates to a plaintiff's right to proceed with an action).

(7) The powers of the Court or the Judge hearing an application under this rule may be exercised whether the defendant against whom the application is made appears at the hearing or not.

(8) Where the defendant does not appear at the hearing the plaintiff shall produce at the hearing an affidavit of service of the summons where personal service has been effected or an advice of receipt from the post office where service has been effected by recorded delivery.

(9) Expressions used in this rule to which meanings are assigned by Order III, rule 11, shall have the same meanings in this rule as in that rule."

3. The following amendments shall be made in Order XXVII, which relates to default of pleading:—

(1) In rule 2 immediately after the word "may" there shall be inserted the words "subject to rule 20 of this Order.".

(2) In rule 3 immediately after the words "to rule 2" there shall be inserted the words "and rule 20 of this Order".

(3) In rule 6 immediately after the words "to rule 2" there shall be inserted the words "and rule 20 of this Order".

(4) Immediately after rule 19 there shall be inserted the following rule:—

"Application in certain hire-purchase actions for judgment in default of defence

20.—(1) In an action arising out of a hire-purchase agreement brought against the hirer of the goods to which the agreement relates, or a guarantor, in which the writ is indorsed with a claim for money, not being—

(*a*) a claim for unliquidated damages, or

(*b*) a claim for no more than the amount of any instalment or instalments of the hire-purchase price which is or are due and unpaid,

judgment shall not be entered in default of defence except with the leave of the Court or a Judge.

(2) Expressions used in this rule to which meanings are assigned by Order III, rule 11, shall have the same meanings in this rule as in that rule.

(3) Paragraph (2)(*b*) and (*c*) and paragraphs (4) to (7) of rule 19 of Order XIII shall apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under that rule and the summons by which an application under this rule is made shall be served on the defendant in the manner prescribed by Order LXVII, rule 4, or by sending it by recorded delivery to his last known address."

4. For items (v) and (viii) of paragraph (1) of rule 1 of Order LXA, which relates to the jurisdiction of Registrars, there shall be substituted the following items:—

"(v) applications under Order XIII, rules 1, 17 and 19 (default of appearance);" and

"(viii) applications under Order XXVII, rules 18 and 20 (moneylenders and hire-purchase actions);".

5. Immediately after paragraph 9 of Scale III of Part VI of Appendix S, which relates to miscellaneous fixed costs, there shall be added the following paragraph:—

"10. On an application by summons under Order XIII, rule 19, or Order XXVII, rule 20 (which apply to certain actions arising out of hire-purchase agreements), the following costs shall be allowed:—

Where the amount recovered is less than £300 ...	... £1 15 0
Where the amount is £300 or more	... £2 10 0

Where there is more than one defendant for each additional defendant ... ... 3 6"

6. For the heading to Form 1A in Appendix K there shall be substituted the following heading:—

"Summons in Moneylenders and Hire-Purchase Actions"

7. These rules may be cited as The Rules of the Supreme Court (Northern Ireland) (No. 5) 1964, and shall come into force on the 4th day of November, 1964.

Dated this 5th day of October, 1964.

(Signed) *MacDermott*
Charles L. Sheil
Robert Lowry
E. W. Jones
A. McGonigal
Leonard I. G. Fox
James J. Napier

EXPLANATORY NOTE

(This note is not part of the rules, but is intended to indicate their general purport.)

These rules make special provision for the entry of judgment in default of appearance or defence in an action under a hire-purchase agreement for a sum of money, not being unliquidated damages or arrears of the instalments, due under the agreement. It will not be possible in such cases for judgment to be entered without leave. The right to grant leave is delegated to the Registrar under Order LXA.