# 1991 No. 330

# SUPREME COURT, NORTHERN IRELAND

# PROCEDURE

## The Rules of the Supreme Court (Northern Ireland) (Amendment No. 3) 1991

*Made* . . . . . *25th July 1991*

*Coming into operation* . . . . . *2nd September 1991*

*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 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 No. 3) 1991 and shall come into operation on 2nd September 1991.

(2) In these Rules an Order referred to by number or an Appendix referred to by letter means the Order so numbered and the Appendix so lettered in the Rules of the Supreme Court (Northern Ireland) 1980(**b**).

*Pleadings—Matters which must be specifically pleaded*

**2.** Order 18, rule 8(3), shall be amended by inserting after the words "claim for exemplary damages" the words "or for provisional damages".

*Discovery and inspection of documents*

**3.**—(1) For Order 24 there shall be substituted the Order set out in Schedule 1 hereto.

(2) In Form 28A in Appendix A, for the reference in the heading to "(0.24 r. 6(2))" there shall be substituted a reference to "(0.24 r. 8(2))".

*Medical Evidence*

**4.** For Order 25 there shall be substituted the Order set out in Schedule 2 hereto.

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(**a**) 1978 c. 23

(**b**) S.R. 1980 No. 346; the relevant amending instruments are S.R. 1983 No. 5, S.R. 1986 No. 128 and S.R. 1988 No. 70

*Interrogatories*

**5.** Order 26 shall be amended by substituting for rules 1 to 6 the rules set out in Schedule 3 hereto.

*Provisional damages for personal injuries*

**6.** Order 37 shall be amended as set out in Schedule 4 hereto.

*Evidence*

**7.** Order 38 shall be amended as set out in Schedule 5 hereto.

*Costs*

**8.** Order 62 shall be amended as follows—

(1) In rule 6(9) for the reference to rule 6 there shall be substituted a reference to rule 8, and

(2) The following rule shall be inserted after rule 10—

"*Penalty in costs where oral evidence not reasonably necessary*

**10A.** Without prejudice to rule 10, where it appears to the Court in any proceedings that—

(*a*) any witness has been called to give oral evidence where his evidence could have been put before the Court in some other manner, and

(*b*) his giving oral evidence was not reasonably necessary,

the Court may order that the costs occasioned by calling the witness to give oral evidence shall fall upon the party who caused him so to be called, and for this purpose may make such provision in respect of taxation against other parties or the legal aid fund as it thinks fit."

*Dated 27th June 1991.*

Brian Hutton
John MacDermott
J. P. Higgins
R. D. Carswell
Anthony Campbell
H. P. Kennedy
Brian Kerr
Owen Catchpole
Aidan A. Canavan

I concur, MacKay of Clashfern, C.

*Dated 25th July 1991*

SCHEDULE 1 Rule 3

ORDER 24

DISCOVERY AND INSPECTION OF DOCUMENTS

*Mutual discovery of documents*

1.—(1) After the close of pleadings in an action begun by writ there shall, subject to and in accordance with the provisions of this Order, be discovery by the parties to the action of the documents which are or have been in their possession, custody or power relating to matters in question in the action.

(2) Nothing in this Order shall be taken as preventing the parties to an action agreeing to dispense with or limit the discovery of documents which they would otherwise be required to make to each other.

*Discovery by parties without order*

2.—(1) Subject to the provisions of this rule and of rule 4, the parties to an action between whom pleadings are closed must make discovery by exchanging lists of documents and, accordingly, each party must, within 14 days after the pleadings in the action are deemed to be closed as between him and any other party, make and serve on that other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question between them in the action.

Without prejudice to any directions given by the Court under Order 16, rule 4, this paragraph shall not apply in third party proceedings, including proceedings under that Order involving fourth or subsequent parties.

(2) Unless the Court otherwise orders, in any action where liability is admitted or where the action arises out of an accident on land due to a collision or apprehended collision involving a vehicle discovery shall be limited to disclosure of any documents relating to special damage.

(3) Paragraph (1) shall not be taken as requiring a defendant to an action for the recovery of any penalty recoverable by virtue of any enactment to make discovery of any documents.

(4) Paragraphs (2) and (3) shall apply in relation to a counterclaim as they apply in relation to an action.

(5) On the application of any party required by this rule to make discovery of documents, the Court may—

(*a*) order that the parties to the action or any of them shall make discovery under paragraph (1) of such documents or classes of documents only, or as to such only of the matters in question, as may be specified in the order, or

(*b*) if satisfied that discovery by all or any of the parties is not necessary, or not necessary at that stage of the action, order that there shall be no discovery of documents by any or all of the parties either at all or at that stage;

and the Court shall make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the action or for saving costs.

(6) An application for an order under paragraph (5) must be by summons, and the summons must be taken out before the expiration of the period within which by virtue of this rule discovery of documents in the action is required to be made.

(7) Any party to whom discovery of documents is required to be made under this rule may, at any time within one month after the pleadings in the action are deemed to be closed, serve on the party required to make such discovery a notice requiring him to make an affidavit verifying the list which he has made under paragraph (1),

and the party on whom such a notice is served must, within 14 days after service of the notice, make and file an affidavit in compliance with the notice and serve a copy of the affidavit on the party by whom the notice was served.

*Order for discovery*

3.—(1) Subject to the provisions of this rule and of rules 4 and 8, the Court may order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party.

(2) Where a party who is required by rule 2 to make discovery of documents fails to comply with any provision of that rule, the Court, on the application of any party to whom the discovery was required to be made, may make an order against the first-mentioned party under paragraph (1) of this rule or, as the case may be, may order him to make and file an affidavit verifying the list of documents he is required to make under rule 2 and to serve a copy thereof on the applicant.

(3) An order under this rule may be limited to such documents or classes of document only, or to such only of the matters in question in the cause or matter, as may be specified in the order.

*Order for determination of issue, etc., before discovery*

4. Where on an application for an order under rule 2 or 3 it appears to the Court that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the Court may order that that issue or question be determined first.

*Form of list and affidavit*

5.—(1) A list of documents made in compliance with rule 2, or with an order under rule 3, must be in Form No. 22 in Appendix A, and must enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.

(2) If it is desired to claim that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit made as aforesaid verifying a list of documents must be in Form No. 23 in Appendix A.

*Defendant entitled to copy of co-defendant's list*

6.—(1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under any of the foregoing rules of this Order on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counterclaim by any other defendant to the counterclaim.

(2) A party required by virtue of paragraph (1) to supply a copy of a list of documents must supply it free of charge on a request made by the party entitled to it.

(3) Where in an action begun by originating summons the Court makes an order under rule 3 requiring a defendant to the action to serve a list of documents on the

plaintiff, it may also order him to supply any other defendant to the action with a copy of that list.

(4) In this rule "list of documents" includes an affidavit verifying a list of documents.

*Order for discovery of particular documents*

7.—(1) Subject to rule 9, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it.

(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavits under rule 2 or rule 3.

(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

*Application under sections 31 or 32(1) of the Administration of Justice Act 1970*

8.—(1) An application for an order under section 31 of the Administration of Justice Act 1970 for the disclosure of documents before the commencement of proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the summons.

(2) An application after the commencement of proceedings for an order under 32(1) of the said Act for the disclosure of documents by a person who is not a party to the proceedings shall be made by summons in Form No. 28A in Appendix A, which must be served on that person and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by an affidavit which must—

(*a*) in the case of a summons under paragraph (1), state the grounds on which it is alleged that the applicant and the person against whom the order is sought are likely to be parties to subsequent proceedings in the High Court in which a claim for personal injuries is likely to be made;

(*b*) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise out of a claim for personal injuries made or likely to be made in the proceedings and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power.

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order under the said section 31 or 32(1) for the disclosure of documents may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just, and shall require the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order are, or at any time have been, in his possession, custody or power and, if not then in his