1979 No. 433

JUDICATURE, NORTHERN IRELAND

SUPREME COURT, NORTHERN IRELAND PROCEDURE

Rules of the Supreme Court (Northern Ireland) (Amendment No. 5) 1979

Made . . . . . *7th December* 1979

Coming into operation . . . *2nd January* 1980

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 these powers and all other powers enabling us in that behalf as follows:—

1. The amendments set out in these rules shall be made to Order 88 of the Rules of the Supreme Court (Northern Ireland) 1936(**b**).

2. In rule 1(1), for the definition of "the Acts", for "1857 to 1964", substitute "1857 to 1977".

3. In rule 1(5), for the words "The Interpretation Act 1889" there shall be substituted the words "The Interpretation Act 1978".

4. For rule 8 there shall be substituted the following rule:—

"**8**—(1) Subject to section 354 of the Act of 1857 the following matters and applications shall be heard and determined in open court:—

(*a*) public sittings;

(*b*) composition meetings and special sittings under section 149 of the Act of 1857;

(*c*) applications for certificates of conformity and for certificates of misfortune under section 6(3) of the Magistrates' Courts Act (Northern Ireland) 1964 or section 5(1) of the Local Government Act (Northern Ireland) 1972;

(*d*) applications to set aside or avoid any settlement, conveyance, transfer, security or payment, or to declare for or against the title of the assignees or trustee to any property adversely claimed;

(*e*) applications for the committal of any person to prison for contempt;

(*f*) applications for the trial of issues of fact with a jury, and the trial of such issues;

(*g*) applications under section 178 of the Companies Act (Northern Ireland) 1960 for leave to act as director or take part in the management of a company.

(2) Any other matter or application in bankruptcy may be heard and determined and any other sitting held in chambers.

(a) 1978 c. 23

(b) S.R. & O. 1936 No. 70 (II, p. 2559)

(3) In arrangements under the control of the court all matters and applications shall be heard and determined and all sittings held in chambers.

(4) Subject to the provisions of the Acts and this rule, any matter may at any time, if the Judge, or, as the case may be, the Master (Bankruptcy), thinks fit, be adjourned from chambers into court or from court to chambers."

5. In rule 11, for paragraphs (1), (2), (3) and (4), there shall be substituted the following paragraphs:—

"(1) Subject to any general or special directions of the Judge, the Master (Bankruptcy) shall have power—

(*a*) to hold public sittings;

(*b*) to hold composition meetings and special sittings under section 149 of the Act of 1857, to annul adjudication orders under the said section and to make vesting orders consequential upon such annulment orders, under section 22(2) of the Act of 1929;

(*c*) to grant certificates of conformity and certificates of misfortune under section 6(3) of the Magistrates' Courts Act (Northern Ireland) 1964 or section 5(1) of the Local Government Act (Northern Ireland) 1972;

(*d*) to make interim orders in case of urgency;

(*e*) to hear and determine any unopposed or ex parte application;

(*f*) to make any order or exercise any jurisdiction which may be made or exercised in chambers.

(2) Any order made or act done by the Master in exercise of the said powers and jurisdiction shall be deemed the order or act of the Court."

6. In the heading to rule 16 for the words "(Forms 32, 34, 70, 89, 90)" there shall be substituted the words "(Forms 32, 34, 34A, 70, 89, 90)".

7. After rule 59 there shall be inserted the following rule:—

"Petition under Article 41 *of the Solicitors (Northern Ireland) Order* 1976

59A.—(1) Where a bankruptcy petition is presented by the Incorporated Law Society of Northern Ireland against a solicitor under Article 41(2) of the Solicitors (Northern Ireland) Order 1976, the Master (Bankruptcy) shall appoint a time for hearing the petition, and notice thereof shall be written on the petition and a copy for service.

(2) The petition shall be served personally on the solicitor against whom it is presented.

(3) Where the petition has not been served the Master (Bankruptcy) may from time to time appoint another day for the hearing.

(4) Subject to paragraph (5), the petition shall not be heard until the expiration of 7 days from the service thereof.

(5) The Court may, on such terms, if any, as it thinks fit, hear the petition at an earlier date—

(*a*) where the Court is satisfied that the solicitor against whom the petition is present has absconded, or

(*b*) in any other case for good cause shown."

8. After rule 60(1) there shall be added the following paragraph:—

"(1A). Paragraph (1) shall apply to the hearing of a petition by the Incorporated Law Society of Northern Ireland under Article 41(2) of the Solicitors (Northern Ireland) Order 1976 in relation to the proof of the act of bankruptcy."

9. After rule 60 there shall be inserted the following rule:—

"REFERENCE BY ENFORCEMENT OF JUDGMENTS OFFICE

Application for adjudication order upon a reference by the Enforcement of Judgments Office

60A.—(1) Where the Enforcement of Judgments Office makes an order under section 77K(1) of the Judgments (Enforcement) Act (Northern Ireland) 1969 revoking an administration order and referring the matter of the administration of the debtor's estate to the High Court, the Chief Enforcement Officer or other officer designated by the Lord Chancellor shall apply to the Court by summons for an order of adjudication of bankruptcy.

(2) The summons shall be served personally on the debtor, together with copies of the said order of the Enforcement of Judgments Office and of the notes of the Master (Enforcement of Judgments) of his reasons for making the order of reference."

10. After rule 61(4) there shall be inserted the following paragraph:—

"(4A). Where an adjudication order is made on a petition by the Incorporated Law Society of Northern Ireland under Article 41(2) of the Solicitors (Northern Ireland) Order 1976 or on a reference by the Enforcement of Judgments Office under section 77K(1) of the Judgments (Enforcement) Act 1969, 2 sealed copies of the order of adjudication shall be sent by the Master (Bankruptcy) to the Official Assignee who shall cause one of the copies to be served personally on the bankrupt."

11. In rule 64(4) the words "In a special case" shall be deleted.

12. After rule 64(6) there shall be inserted the following paragraph:—

"(7) Where an adjudication order is made on a petition by the Incorporated Law Society of Northern Ireland under Article 41(2) of the Solicitors (Northern Ireland) Order 1976 or on a reference by the Enforcement of Judgments Office under section 77K(1) of the Judgments (Enforcement) Act 1969, section 130 of the Act of 1857 and this rule shall apply to the issue and advertisement of notice of the adjudication order, the appointment of public sittings for the bankrupt to surrender and conform and the issue, advertisement and service of notice of such appointment, as they apply when an adjudication order is made on a debtor's petition."

13. After rule 82(2) there shall be added the following paragraph:—

"(2A). The Official Assignee shall send a copy of the said notice to the Enforcement of Judgments Office."

14. In rule 88—

(1) paragraph (1) shall be revoked;

(2) in paragraph 7(*c*) the words "affidavit of" shall be deleted.

15. In rule 105(3)(*c*) the words "affidavit of" shall be deleted.

16. In rule 114, at the end of the rule, there shall be added the words "and to the Enforcement of Judgments Office."

17. After rule 123 there shall be added the following rule:—

"Notice of grant of certificate

123A. Notice of the granting of a certificate to an arranging debtor under section 64 of the Act of 1872 shall be given by the Official Assignee to the Enforcement of Judgments Office."

18. In rule 142(2) the figure "146" shall be deleted.

19. In rule 144, for paragraphs (2) and (3) there shall be substituted the following paragraph:—

"(2) Subject to the Acts and to any order of the Court staying realisation of the bankrupt's property, the Official Assignee may sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or to sell the same in parcels."

20. In rule 158 paragraph (6) shall be revoked.

21. In rule 164(6), after the words "shall be" there shall be added the words "filed and".

22. After rule 197 there shall be added the following rule:—

"Costs or charges payable without taxation

197A. The costs or charges of a solicitor or accountant employed by the Official Assignee or trustee which are payable out of the estate of a bankrupt, deceased insolvent or arranging debtor may, if they do not exceed the sum of £200, be paid and allowed by the Official Assignee or trustee, as the case may be, without taxation or measurement: Provided that the Court may require such costs or charges to be taxed or measured by the Master (Taxing Office)."

23. In rule 198(1), the words "subject to rule 197A", shall be added at the commencement of the rule.

24. In rule 200(2), the words "subject to rule 197A", shall be added at the commencement of the rule.

25. Rule 201 shall be revoked.

26. In rule 202(1), sub-paragraph (*ff*) shall be revoked.

27. After rule 212 there shall be added the following rule:—

"Notice of annulment of adjudication order

212A. Where an adjudication order is annulled the Official Assignee shall send notice of the order of annulment to the Enforcement of Judgments Office."

28. The forms in Part I of Appendix Y shall be amended as follows:—

(*a*) there shall be inserted at the appropriate places in numerical order the forms set out in the First Schedule hereto;

(*b*) in each of the forms 60 and 64 the words "affidavit of" in the fourth paragraph shall be deleted and for the words "affidavits of proof of debts" in the fifth paragraph there shall be substituted the words "proofs of debt";

(*c*) in form 71—

(i) at the end of paragraph numbered 4 there shall be added the following words—

"Particulars of such property are set forth in the First Schedule hereto",

(ii) in paragraph numbered 7, after the words "such creditors", there shall be added the words "and the amount covered by the value of securities held" and before the word "Schedule" there shall be added the word "Second";

(iii) in paragraph numbered 9, for the words "the Local Registration of Title (Ireland) Act 1891" there shall be substituted the words "the Land Registration Act (Northern Ireland) 1970";

(iv) for the Schedule to the said form there shall be substituted the Schedules set out in the Second Schedule hereto;

(*d*) in form 72—

(i) at the end of each of the paragraphs numbered 3, 12 and 19 there shall be added the following words—

"Particulars of such property are set forth in the First Schedule hereto";

(ii) in paragraphs numbered 6, 15 and 22, after the words "such creditors" there shall be added the words "and the amount covered by the value of securities held" and before the word "Schedule" there shall be added the word "Second";

(iii) in paragraphs numbered 8, 17 and 24, for the words "the Local Registration of Title (Ireland) Act 1891" there shall be substituted the words "the Land Registration Act (Northern Ireland) 1970";

(iv) for the Schedule to the said form there shall be substituted the Schedules set out in the Third Schedule hereto;

(*e*) in form 77 the words "affidavit of" in the fourth paragraph shall be deleted.

29. These rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 5) 1979 and shall come into force on 2nd January 1980.

Dated the 22nd day of November 1979.

Lowry
Donald Murray
J. B. E. Hutton
E. M. Doris
Owen Catchpole

I concur

Hailsham of St. Marylebone, C.

Dated the 7th day of December 1979.