1972. No. 316 [NC]

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

Rules of the Supreme Court (Northern Ireland) (No. 4) 1972

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 Order 3 of the Rules of the Supreme Court (Northern Ireland) 1936(b) there shall be inserted the Order set out in Schedule 1 hereto.

2. In Order 3, rule 10 shall be revoked.

3. Order 13 shall be amended as follows—

(1) the proviso to rule 3 shall be deleted, and

(2) rule 17 shall be revoked.

4. In Order 20, rule 11 shall be revoked.

5. Order 27 shall be amended as follows—

(1) the proviso to rule 2 shall be deleted, and

(2) rule 18 shall be revoked.

6. In Order 60A, rule 1(1), for items (v) and (viii) there shall be substituted the following items in the places appropriate to their numbers—

"(v) applications under Order 13, rules 1, 19 and 20 (default of appearance);

(viii) applications under Order 27, rules 20 and 21 (moneylenders and hire-purchase actions);

(xvii) applications by mortgagees or chargeants under Order 55, rule 7, for payment of moneys secured by a mortgage or charge or for the delivery of possession or property subject to a mortgage or charge;"

7. In Order 84, for rules 148 to 160, there shall be substituted the rules set out in Schedule 2 hereto in the places appropriate to their numbers.

8. In Order 91, immediately after the definition of "Direction", there shall be inserted the following definition—

" 'Entry of judgment' means the filing of judgment in accordance with Order 41."

(a) 10 & 11 Eliz. 2. c. 30. (b) S.R. & O. 1936, No. 70 (II, p. 2559).

9. Appendix V shall be amended as follows—

(1) for Form 75 there shall be substituted the Form 75 set out in Schedule 3 hereto,

(2) immediately after Form 75 there shall be inserted the Form 75A set out in Schedule 3 hereto,

(3) for Forms 77 and 78 there shall be substituted the Form 77 set out in Schedule 3 hereto.

10. These rules may be cited as the Rules of the Supreme Court (Northern Ireland) (No. 4) 1972 and shall come into force on 1st January 1973.

Dated 6th November 1972.

(Signed) *Robert Lowry.*
L. E. Curran
E. W. Jones
Maurice W. Gibson
Turlough O'Donnell
Donald Murray.

SCHEDULE 1 RULE 1

Order to be inserted after Order 3 of the Rules of the Supreme Court

ORDER 3A

MONEYLENDERS' ACTIONS

Application and interpretation

1.—(1) These rules apply to a moneylender's action subject to the following rules of this Order.

(2) In these rules—

"moneylender" has the meaning assigned to it by section 6 of the Moneylenders Act 1900,

"moneylender's action" means an action for the recovery of money lent by a moneylender or any interest thereon or for the enforcement of any agreement or security relating to money so lent, being an action brought by the moneylender or an assignee.

Indorsement of writ

2. Before a writ beginning a moneylender's action is issued it must be indorsed with a statement that at the time of the making of the loan or contract or the giving of the security in question the lender was licensed as a moneylender.

Particulars to be included in statement of claim

3. Every statement of claim in a moneylender's action (whether indorsed on the writ or not) must state—

(*a*) the date on which the loan was made,

(*b*) the amount actually lent to the borrower,

(*c*) the rate per cent. per annum of interest charged,

(*d*) the date when the contract for repayment was made,

(*e*) the fact that a note or memorandum of the contract was made and was signed by the borrower,

(*f*) the date when a copy of the note or memorandum was delivered or sent to the borrower,

(*g*) the amount repaid,

(*h*) the amount due but unpaid,

(*i*) the date upon which such unpaid sum or sums became due, and

(*j*) the amount of interest accrued due and unpaid on every such sum.

Judgment in default of appearance or of defence

4.—(1) In a moneylender's action judgment in default of appearance or in default of defence shall not be obtained except with the leave of the Court.

(2) An application for the grant of leave under this rule must be made by summons, and the summons must be served on the defendant personally or by recorded delivery addressed to him at his last known address.

(3) If the application is for leave to enter judgment in default of appearance, the summons shall not be issued until after the time limited for appearing has expired, and a proper affidavit of service of the writ has been filed.

(4) On the hearing of such an application, whether the defendant appears or not, the Court—

(*a*) may exercise the powers of the Court under section 1(1) of the Moneylenders Act 1900, as extended by section 10 of the Moneylenders Act (Northern Ireland) 1933,

(*b*) where it refuses leave under this rule to enter judgment on a claim or any part of a claim, may make or give any such order or directions as it might have made or given had the application been an application under Order 14, rule 1, for judgment on the claim.

SCHEDULE 2 RULE 7

Rules to be inserted in place of rules 148 to 160 of Order 84 of the Rules of the Supreme Court

HABEAS CORPUS

Applications for writ of habeas corpus ad subjiciendum

148.—(1) An application for a writ of *habeas corpus ad subjiciendum* may be made to the Court or a Judge, provided that every application for such writ on a warrant of extradition shall, during the sittings, be made to a Divisional Court.

(2) An application for such writ may be made ex parte to a Judge or by motion to a Divisional Court and, subject to paragraph (3), must be supported by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.

(3) Where the person restrained is unable for any reason to make the affidavit required by paragraph (2), the affidavit may be made by some other person on his behalf and that affidavit must state that the person restrained is unable to make the affidavit himself and for what reason.

Powers of a single Judge

149.—(1) A Judge to whom an application is made ex parte may make an order forthwith for the writ to issue, or may direct that a notice of motion for the writ be issued, or that an application therefor be made by motion to a Divisional Court.

(2) On an application for a writ of *habeas corpus ad subjiciendum* in a criminal cause or matter an order for the release of a person restrained shall not be refused by a Judge.

Service of notice of motion

150. The notice of motion must be served on the person against whom the issue of the writ is sought and on such other persons as the Court or Judge may direct, and, unless the Court or Judge otherwise directs, there must be at least 8 clear days between the service of the notice and the date named therein for the hearing of the application.

Copies of affidavits to be supplied

151. Every party to an application under rule 148 must supply to every other party copies of the affidavits which he proposes to use at the hearing of the application.

Powers to order release of person restrained

152. Without prejudice to rule 149, the Court or Judge hearing an application for a writ of *habeas corpus ad subjiciendum* may in its or his discretion order that the person restrained be released, and such order shall be sufficient warrant to any governor of a prison, constable or other person for the release of the person under restraint.

Directions as to return to writ

153. Where a writ of *habeas corpus ad subjiciendum* is ordered to issue, the Court or Judge by whom the order is made shall give directions as to the Court or Judge before whom, and the date on which, the writ is returnable.