1971. No. 153 **[NC]**

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

RULES OF THE SUPREME COURT (NORTHERN IRELAND) (No. 2) 1971

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. In the Rules of the Supreme Court (Northern Ireland) 1936(**b**) as amended, for the Roman numerals which designate the number of each Order there shall be substituted the corresponding Arabic numerals.

2. In Order 5 immediately after rule 2 there shall be inserted the following rule:—

"**2A.** Every action in which there is a claim for payment of principal money or interest secured by any mortgage or charge or a claim for delivery of possession of any property forming a security for payment of any principal money or interest shall be assigned to the Chancery Division."

3. Order 13 shall be amended as follows:—

(1) in rule 3 for the words "subject to rule 19 of this Order" there shall be substituted the words "subject to rules 19 and 20 of this Order".

(2) in rule 4 for the words "and rule 19 of this Order" there shall be substituted the words "and rules 19 and 20 of this Order".

(3) in rule 8 the words "and upon the same being so ascertained, a writ of delivery may issue for the same" shall be deleted.

(4) in rule 9 after the word "apply" in line 10 there shall be added the words "upon the production of a certificate by the solicitor for the plaintiff or, in the case of a plaintiff in person, of an affidavit that the action is not one to which rule 20 of this Order applies."

(5) immediately after rule 19 there shall be inserted the following rule:—

"**20.**—(1) In any action in which there is a claim for payment of principal money or interest secured by any mortgage or charge or a claim for delivery of possession of any property forming a security for the payment of any principal money or interest judgment shall not be entered in default of appearance without the leave of the Court or a Judge.

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

(2) The Court or a Judge may require that an application for leave shall be supported by such evidence as might be required if relief were being sought on originating summons under Order 55, rule 7, and may direct notice of such evidence to be given to the defendant and to such other person, if any, as the Court or a Judge may think proper.

(3) An application for leave must be made by summons served on the defendant personally."

4. Order 27 shall be amended as follows:—

(1) in rule 2 for the words "subject to rule 20 of this Order" there shall be substituted the words "subject to rules 20 and 21 of this Order".

(2) in rule 3 for the words "and rule 20 of this Order" there shall be substituted the words "and rules 20 and 21 of this Order".

(3) in rule 8 after the word "costs" in line 12 there shall be added the words "upon the production of a certificate by the solicitor for the plaintiff or, in the case of a plaintiff in person of an affidavit that the action is not one to which rule 21 of this Order applies."

(4) immediately after rule 20 there shall be inserted the following rule:—

"**21.**—(1) In any action in which there is a claim for payment of principal money or interest secured by any mortgage or charge or a claim for delivery of possession of any property forming a security for payment of any principal money or interest:—

(*a*) no judgment shall be entered in default of defence without leave of the Court or a Judge who may require the application for leave to be supported by such evidence as might be required if relief were being sought on originating summons under Order 55, rule 7, and may direct notice of such evidence to be given to the defendant and to such other person, if any, as the Court or a Judge may think proper;

(*b*) on any motion for judgment under rule 12 the Court or a Judge may require the motion to be supported and notice of evidence given in like manner as an application under sub-paragraph (*a*).

(2) An application for leave under paragraph 1(*a*) must be made by summons, and the summons or the notice of motion mentioned in paragraph 1(*b*), as the case may be, must be served on the defendant personally."

5. Immediately after Order 54E there shall be inserted the Order set out in Schedule 1 hereto.

6. In Order 60A rule 1(1) the following item shall be inserted in the place appropriate to its number—"(XIV) to make an order on consent under Order 54F rule 4(2)."

7. Order 65, rule 61 shall be amended as follows:—

(1) immediately after regulation (10) the following regulation shall be inserted:—

"(11) The allowances which may be made to expert witnesses shall include:—

(*a*) a fee for attending at and time spent travelling to and from Court;

(*b*) travelling and subsistence expenses necessarily incurred;

(*c*) a reasonable fee for qualifying to give evidence;

(*d*) a reasonable fee for attending at one pre-trial consultation held after the close of pleadings and prior to the day of the hearing or trial provided—

(i) that the case is one which having regard to the amount recovered or paid in settlement, or the relief awarded, could not have been brought in the county court or a Judge has certified that it was fit to be tried in the High Court, and

(ii) that the senior or only counsel has certified that such attendance was necessary."

(2) for regulation (42) there shall be substituted the following regulation:—

"(42(1)) Subject to the provisions of any enactment or of these Rules, and save in cases within Order 14 or rule 49 of this Order, in any proceedings which were commenced in the High Court but which, having regard to the subject matter thereof and to the amount recovered or relief awarded, could have been brought in the county court the plaintiff shall not be entitled to any more costs than those which he could have recovered if the proceedings had been brought in the county court, unless the parties otherwise agree or, by reason of the questions of law or issues of fact involved or the extent of the right to property affected or the full amount of the claim or other circumstances, the trial Judge shall otherwise direct.

(2) In cases to which paragraph (1) applies, where the full amount of the claim exceeds the amount which could have been claimed in proceedings brought in the county court, the plaintiff shall, unless the trial Judge otherwise directs and without prejudice to any direction under paragraph (1), be entitled to recover one-half of the ordinary costs.

(3) For the purposes of this regulation the full amount of the claim shall be deemed to be the amount which would have been recoverable if no deduction had been made in respect of the claimant's own fault.

(4) A direction under this regulation may provide that the plaintiff shall be entitled to recover such proportion of his costs as may be specified in such direction.

(5) Where a plaintiff is entitled to costs on a county court scale only, the taxing master shall have the same power of directing on what county court scale costs are to be allowed and of allowing any items of costs as the judge of the county court would have had if the action had been brought in that court.

(6) The limitations imposed by this regulation on the plaintiff's right to recover the ordinary costs of proceedings shall not apply if any defendant has successfully opposed the remittal of the proceedings to the county court which was sought or concurred in by the plaintiff."

(3) for regulation (48) there shall be substituted the following regulation:—

"(48) On every taxation of costs under regulation (28) there may be allowed:—

(*a*) in cases of difficulty or importance a consultation prior to the settlement of statement of claim or defence, as the case may be;

(*b*) a pre-trial consultation held at any time after the close of pleadings;

(*c*) such further or other consultations as may be necessary or proper."

8. In Order 82 there shall be inserted the following rule:—

"7. A copy petition, affidavit or order to be filed pursuant to section 2 of the Act of 1890 may be a copy produced by photographic or other process giving a positive, clear and permanent representation free from blemishes."

9. In Order 88, rule 5(1), immediately after the words "Order 66 rule 3" there shall be inserted the words, "and Order 90 rule 4".

10. In Order 90 there shall be inserted the following rule:—

"4. In all documents prepared for use in the Supreme Court dates, sums and numbers must be expressed in figures and not in words and subject to Order 19, rule 4, where reference is made to a sum of money the sum must be stated in decimal currency."

11. In Appendix B there shall be inserted in the places appropriate to their numbers the Forms 32 and 33 set out in Schedule 2 hereto.

12. These rules may be cited as the Rules of the Supreme Court (Northern Ireland) (No. 2) 1971 and shall come into force on 14th June 1971, with the exception of rule 7(2) which shall come into force on 1st October 1971.

Date: 26th May 1971.

(Signed) *MacDermott*
Robert Lowry
E. W. Jones
A. McGonigal
Maurice W. Gibson
Basil Kelly
James J. Napier
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