EXPLANATORY NOTE

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

These rules introduce a new Order LXA. This Order delegates to the Registrar the power to transact the business and exercise jurisdiction in the proceedings and matters specified in paragraph (1) of rule 1 of the Order (which includes matters in relation to execution).

The Registrar is given power to adjourn any application to the Judge and there is provision in the Order for an appeal from the decision of the Registrar.

The Order does not confer jurisdiction on a Registrar in a matter directly relating to the liberty of the subject.

1964. No. 19 **[NC]**

SUPREME COURT, NORTHERN IRELAND
PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (No. 3) 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:—

PART I

DEBTORS ACT (IRELAND) 1872

1. Immediately after Order LXXXVIII of the Rules of the Supreme Court (Northern Ireland) 1936(b) there shall be inserted the following Order:—

"ORDER LXXXVIIIA

Proceedings under section 6 of the Debtors Act (Ireland) 1872(c)

1.—(1) In these rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"debtor" means a person liable under a judgment;

"the Judge" means the Judge to whom causes and matters in bankruptcy are for the time being assigned, or any Judge acting for such Judge;

"judgment" means any judgment, order or decree of any Division of the High Court or of any inferior Court for the payment of money;

(a) 10 & 11 Eliz. 2. c. 30.
(b) S.R. & O. 1936 (No. 70) II, p. 2559.
(c) 35 & 36 Vict. c. 57.

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"judgment creditor" means a person entitled to enforce a judgment;
"judgment summons" means a summons under section 6 of the Debtors Act (Ireland) 1872;
"Messenger" means the Bankruptcy Messenger, and shall include an assistant messenger;
"the office of the Court" means the office or offices for the time being used for the transaction of business in bankruptcy matters;
"Registrar" means the Bankruptcy Registrar, and shall include the Deputy Registrar.

(2) Any document served by recorded delivery under the rules shall be deemed to have been served at the time at which it would have been delivered in the ordinary course of post.

(3) A form referred to by number means the form so numbered in Appendix Y, Part II, to these Rules.

2. Except as otherwise provided by the rules of this Order, the jurisdiction and powers of the High Court under section 6 of the Debtors Act (Ireland) 1872 shall be exercised by the Judge in person and, unless otherwise directed by the Judge, all applications under these rules shall be heard and determined in Chambers.

3.—(1) A judgment summons shall not issue without leave of the Registrar.

(2) An application for leave shall be made ex parte by lodging with the Registrar the appropriate form of judgment summons, an affidavit in Form 1 or as near thereto as the circumstances of the case shall require, and an office copy of the judgment.

(3) Leave to issue a judgment summons shall not be given—
(*a*) where the application relates to an order to lodge money in court or to an order containing any form of undertaking in respect of the amount which it is sought to recover; or
(*b*) where the affidavit referred to in rule 3(2) does not disclose that the debtor has or has had since the date of the judgment the means to pay the amount which it is sought to recover; or
(*c*) where the judgment creditor is not presently entitled to issue execution; or
(*d*) where the debtor is a bankrupt or an order under section 343 of the Irish Bankrupt and Insolvent Act 1857(**a**) is in force protecting his person and property from process and the debt is provable in the bankruptcy or arrangement.

(4) Leave to issue a judgment summons may be refused where, by reason of the amount of the debt or instalment of a debt due under a judgment, the proceedings could have been brought in an inferior court.

4.—(1) A judgment summons shall be in Form 2 or 5 as applicable, and shall, unless otherwise directed, be served personally upon the debtor not less than five clear days before the day fixed for the hearing, together with a sum reasonably sufficient to cover the debtor's expenses in travelling to and from the court.

(a) 20 & 21 Vict. c. 60.

(2) Where a judgment summons has not been served in due time it may by leave of the Registrar be re-issued and, if necessary, amended from time to time within six weeks of leave to issue being granted, notwithstanding that the debtor has ceased to reside or carry on business at the address given in the affidavit referred to in rule 3(2) of this Order.

5.—(1) The affidavit referred to in rule 3(2) shall be admissible in evidence on the hearing of the judgment summons.

(2) Witnesses may be summoned to prove the means of the debtor in the same manner as witnesses are summoned to give evidence upon the hearing of an action.

(3) Where the debtor appears at the hearing and an order is not made, the Judge may allow to the debtor, by way of set-off or otherwise, his proper costs, including compensation for loss of time, as upon an attendance by a defendant at a trial in court.

6.—(1) Where a judgment summons is pending or an order of commitment is outstanding in respect of money payable under any judgment, execution shall not issue in respect of the money so payable, except by leave of the Judge.

(2) Where a judgment creditor who has issued execution against a debtor applies for the issue of a judgment summons against him, execution shall be stayed and the stay shall not be removed, except by leave of the Judge, until the summons shall have been disposed of.

(3) An application for leave under this rule shall be made in accordance with the provisions of paragraph (2) of rule 12.

7.—(1) On the hearing of a judgment summons the Judge may—

(*a*) make an order of commitment; or

(*b*) make an order for payment, either at a specified time or by instalments, of the amount due under the judgment and the costs of the judgment summons; or

(*c*) adjourn the hearing and make an order directing the attendance of the debtor at the adjourned hearing; or

(*d*) dismiss the judgment summons.

(2) Where the debtor has made default in payment under a judgment for periodical payments or under an order for payment by instalments pursuant to paragraph (1)(*b*) of this rule, an order of commitment may be made in respect of all or any such payments or instalments in arrear.

(3) If an order of commitment is made, the Judge may direct execution of the order to be suspended on terms that the debtor pays the amount due, together with the costs of the judgment summons, either at a specified time or by instalments, and, where the judgment directed periodical payments, in addition to any sums from time to time accruing due under the judgment.

(4) If the judgment directed periodical payments and an order of commitment is suspended on such terms as are mentioned in the last foregoing paragraph, all payments thereafter made under the order shall be deemed to be made, first, in or towards the discharge of any sums from

time to time accruing due under the judgment and secondly, in or towards the discharge of the debt in respect of which the judgment summons was issued and the costs of the summons.

8. Where an order has been made under rule 7(1)(*b*) and the debtor has made default in payment, the judgment creditor may, without leave, issue a further judgment summons in Form 5 upon lodging with the Registrar an affidavit in Form 6 or as near thereto as the circumstances of the case shall require.

9.—(1) Where an order has been made on the hearing of a judgment summons for payment of the amount due under the judgment by instalments (in this rule called "an instalment order"), and an order of commitment is made in respect of the non-payment of one or more of the instalments before the whole of the instalments have become due, then if the Judge orders the execution of the order of commitment to be suspended to enable the debtor to pay the amount due, he may, if satisfied that the debtor is unable to pay the instalments under the instalment order while complying with the terms on which the order of commitment is suspended, order that the instalment order shall be suspended for so long as the execution of the order of commitment is suspended, or for any less period.

(2) Any such suspension of the instalment order shall cease to operate if the Judge at any subsequent time so orders, or if the judgment creditor withdraws or abandons the order of commitment.

10. Where an order of commitment has been made but execution of the order is suspended and the debtor subsequently desires to apply for a further suspension, he shall attend at or write to the office of the Court and apply for the suspension he requires, stating the reasons for his inability to comply with the order, and the Registrar shall fix a day for the hearing of the application by the Judge and serve notice thereof on the judgment creditor and on the debtor by recorded delivery at least three clear days before the day fixed for the hearing.

11.—(1) Where an order of commitment has been made but execution of the order is suspended, application for leave to issue the order shall be made to the Judge.

(2) Application shall be made by lodging with the Registrar:—

(*a*) a notice of application in Form 8;

(*b*) a copy of the notice of the order of commitment, certified thereon to be a true copy of the notice served on the debtor;

(*c*) the certificate of the posting of the said notice;

(*d*) a statement in writing by the judgment creditor or his solicitor that the address to which the said notice was sent was the debtor's last known address, what sums (if any) the debtor has paid on foot of the order of commitment, and the amount in arrear.

(3) Notice of the application and of the time fixed for the hearing shall be served on the debtor by recorded delivery two clear days at least before the date fixed for the hearing.

(4) Upon the hearing of the application the judgment creditor shall not be required to give evidence unless the Judge otherwise directs, but shall