
STATUTORY INSTRUMENTS

1981 No. 1687

The County Court Rules 1981

ORDER 20

EVIDENCE

PART II

EVIDENCE GENERALLY

Evidence generally to be given orally and in open court

4. Subject to any provision made by or under any Act or rule and to any rule of law, any fact required to be proved at the hearing of an action or matter by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.

Evidence in chambers

5. In any proceedings in chambers evidence may be given by affidavit unless by any provision of these rules it is otherwise provided or the court otherwise directs, but the court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used in evidence without the leave of the court.

Evidence by affidavit on order

6.—(1) In any case to which rule 5 does not apply the court may, at or before the hearing of an action or matter, order that the affidavit of any witness may be read at the hearing if in the circumstances of the case it thinks it reasonable to do so.

(2) An order under paragraph (1) may be made on such terms as to the filing and giving of copies of the affidavit and as to the production of the deponent for cross-examination as the court thinks fit but, subject to such terms and to any subsequent order of the court, the deponent shall not be subject to cross-examination and need not attend the hearing for the purpose.

Use of affidavit on notice

7.—(1) Where a party desires to use at the hearing of an action or matter an affidavit which is not rendered admissible by rule 5 and in respect of which no order has been made under rule 6, he may, not less than 14 days before the hearing, give notice of his desire, accompanied by a copy of the affidavit, to the party against whom it is to be used, and unless that party, not less than 7 days after receipt of the notice, gives notice to the other party that he objects to the use of the affidavit, he shall be taken to have consented to its use and accordingly the affidavit may be used at the hearing.

(2) Where—

- (a) the defendant in a fixed date action has not delivered a defence within the time limited by Order 9, rule 2, or

(b) the defendant in a default or fixed date action does not appear on a pre-trial review of the action,
evidence by affidavit shall be admissible in support of the plaintiff's claim without notice being given under paragraph (1), unless the court otherwise orders.

Evidence of particular facts

8. The court may, at or before the trial or hearing of any action or matter and on or before any application in the course of proceedings or any pre-trial review, order that evidence of any particular fact shall be given at the hearing of the action or matter or, as the case may be, on the application or pre-trial review in such manner as may be specified in the order, and in particular—

- (a) by the production of documents or entries in books, or
- (b) by copies of documents or entries in books, or
- (c) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact.

Savings and revocation or variation of orders

9.—(1) Nothing in rules 5 to 8 or in any order made thereunder shall affect the weight, if any, to be attached to a statement admissible in evidence under any of those rules or under any such order, or the power of the court, when the statement is tendered in evidence, to refuse to admit it if in the interest of justice the court thinks fit to do so.

(2) Subject to paragraph (3), any order under rules 5 to 8 (including an order made on appeal from the registrar to the judge) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the court made at or before the hearing of the proceedings.

(3) Nothing in paragraph (2) shall enable the registrar to revoke or vary an order made by the judge.

Form and contents of affidavit

10.—(1) Subject to the following paragraphs of this rule, the provisions of the R.S.C. with respect to—

- (a) the form and contents of an affidavit;
- (b) the making of an affidavit by two or more deponents or by a blind or illiterate deponent;
- (c) the use of any affidavit which contains an interlineation, erasure or other alteration or is otherwise defective;
- (d) the striking out of any matter which is scandalous, irrelevant or otherwise oppressive;
- (e) the insufficiency of an affidavit sworn before any agent, partner or clerk of a party's solicitor; and
- (f) the making and marking of exhibits to an affidavit,

shall apply in relation to an affidavit for use in a county court as they apply in relation to an affidavit for use in the High Court.

(2) Before any affidavit is used in evidence it must be filed, but in an urgent case the court may make an order upon the undertaking of a party to file, within such time as the court may require, any affidavit used by him before it is filed.

(3) Every affidavit must be indorsed with a note showing on whose behalf it is filed and the court may refuse to accept an affidavit which is not so indorsed.

(4) Unless the court otherwise orders, an affidavit may be used notwithstanding that it contains statements of information or belief.

(5) Every affidavit shall state which of the facts deposed to are within the deponent's knowledge and which are based on information or belief and shall give, in the former case, his means of knowledge and, in the latter case, the sources and grounds of the information or belief.

Documents produced from proper custody

11.—(1) Where a document which would, if duly proved, be admissible in evidence is produced to the court from proper custody, it shall be admitted without further proof if—

- (a) in the opinion of the court it appears genuine; and
- (b) no objection is taken to its admission.

(2) If objection is taken to the admission of any document so produced, the court may adjourn the hearing of the action or matter for proof of the document and, if it is proved, the party objecting shall pay the costs occasioned by the objection unless the court otherwise orders.