
STATUTORY INSTRUMENTS

1981 No. 1687

The County Court Rules 1981

ORDER 5

CAUSES OF ACTION AND PARTIES

Joinder of causes of action

1. Subject to rule 3, a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action—

- (a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action, or
- (b) if the plaintiff claims or the defendant is alleged to be liable in the capacity of executor or administrator of an estate in respect of one or more of the causes of action and in his personal capacity but with reference to the same estate in respect of all the others, or
- (c) with the leave of the court.

Joinder of parties

2. Subject to rule 3, two or more persons may be joined together in one action as plaintiffs or as defendants—

- (a) where all rights to relief claimed in the action (whether they are joint, several or in the alternative) are in respect of or arise out of the same transaction or series of transactions and if separate actions were brought by or against each of those persons, some common question of law or fact would arise, or
- (b) in any other case, with the leave of the court.

Power to order separate trials

3. If it appears to the court that the joinder of two or more causes of action, or of two or more plaintiffs or defendants, in the same action may embarrass or delay the trial or is otherwise inconvenient, the court may order separate trials or make such other order as may be expedient.

Misjoinder or nonjoinder of parties

4. No action or matter shall be defeated by reason of the misjoinder or nonjoinder of any parties and the court may in any action or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the action or matter.

Representative proceedings

5.—(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 6, the proceedings may be begun and, unless the court otherwise

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orders, continued, by or against any one or more of them as representing all or all except one or more of them.

- (2) At any stage of proceedings under this rule the court may—
- (a) on the application of a plaintiff who is suing in a representative capacity, appoint him to represent all, or all except one or more, of the persons on whose behalf he sues;
 - (b) on the application of the plaintiff or of a defendant who is sued in a representative capacity, appoint any one or more of the defendants or other persons on whose behalf the defendants are sued to represent all, or all except one or more, of those persons.

Where in the exercise of the power conferred by sub-paragraph (b) the court appoints a person not named as a defendant, it shall make an order under Order 15, rule 1, adding that person as a defendant:

- (3) An application under paragraph (2)—
- (a) if made under sub-paragraph (a), may be *ex parte*;
 - (b) if made under sub-paragraph (b), shall be made on notice—
 - (i) where the applicant is the plaintiff, to the person sought to be appointed, or
 - (ii) where the applicant is a defendant, to the plaintiff and to any person, other than the applicant, sought to be appointed.

and in each case the notice shall state the facts on which the applicant relies and the names and addresses or, where appropriate a collective description, of the persons to be represented.

(4) Where an order is made granting an application under paragraph (2)(b), the proper officer shall send notice of the order to the person to whom notice of the application was given and shall notify other persons affected by the order in such manner as the court may direct.

(5) A judgment or order given or made in proceedings under this rule shall be binding on all persons on whose behalf the plaintiff sues or, as the case may be, the defendant is sued but shall not be enforced against any person not a party to the proceedings except with the leave of the court.

(6) An application for leave under paragraph (5) shall be made on notice to the person against whom it is sought to enforce the judgment or order and, notwithstanding that the judgment or order is binding on him, he may dispute liability to have it enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.

Representation of person or class

- 6.—(1) In any proceedings concerning—
- (a) the estate of a deceased person,
 - (b) property subject to a trust, or
 - (c) the construction of a written instrument, including a statute,

the court may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested in or affected by the proceedings, if the person, the class or some member of the class cannot readily be ascertained or cannot be found or if it otherwise appears to the court expedient to exercise this power for the purpose of saving expense.

(2) A judgment or order given or made when a person or persons appointed under paragraph (1) is or are before the court shall be binding on the person or class so represented.

(3) Where, in proceedings to which paragraph (1) applies, a compromise is proposed and some of the persons who are interested in or who may be affected by the compromise (including unborn or unascertained persons) are not parties to the proceedings but—

- (a) there is some person in the same interest before the court who assents to the compromise or on whose behalf the court sanctions the compromise, or
- (b) the absent persons are represented by a person appointed under paragraph (1) who so assents,

the court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order has been obtained by fraud or non-disclosure of material facts.

Representation of estate where no personal representative

7.—(1) Where in any proceedings it appears to the court that a deceased person who was interested in the matter in question in the proceedings has no personal representative, the court may, on the application of any party to the proceedings—

- (a) proceed in the absence of a person representing the estate of the deceased person or
- (b) by order appoint a person to represent the estate for the purpose of the proceedings.

(2) Any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as if a personal representative of that person had been a party to the proceedings.

(3) Before making an order under this rule, the court may require notice of the application for the order to be given to such of the persons having an interest in the estate as it thinks fit.

Proceedings against estates

8.—(1) Where any person against whom an action would have laid has died but the cause of action survives, the action may, if no grant of probate or administration has been made, be brought against the estate of the deceased.

(2) Without prejudice to the generality of paragraph (1), an action brought against “the personal representatives of A.B. deceased” shall be treated, for the purposes of that paragraph, as having been brought against his estate.

(3) An action purporting to have been commenced against a person shall be treated, if he was dead at its commencement, as having been commenced against his estate in accordance with paragraph (1), whether or not a grant of probate or administration was made before its commencement.

(4) In any such action as is referred to in paragraph (1) or (3)—

- (a) the plaintiff shall, in the case of a fixed date action, on or before the return day, or, in the case of a default action, within the time allowed for service of the summons, apply to the court for an order appointing a person to represent the deceased's estate for the purpose of the proceedings or, if a grant of probate or administration has been made, for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person so appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;
- (b) the court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in subparagraph (a) and allow such amendments (if any) to be made and make such other order as the court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

(5) Before making an order under paragraph (4) the court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.

(6) Where an order is made under paragraph (4), the person against whom the proceedings are to be carried on shall be served with a copy of the order, together with a copy of the summons in the action, in accordance with the rules applicable to the service of such a summons on a defendant.

(7) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings.

Partners may sue and be sued in firm name

9.—(1) Subject to the provisions of any enactment, any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within England or Wales may sue or be sued in the name of the firm of which they were partners when the cause of action arose.

(2) Where partners sue or are sued in the name of the firm, the partners shall, on demand made in writing by any other party, forthwith deliver to the party making the demand and file a statement of the names and places of residence of all the persons who were partners in the firm when the cause of action arose.

(3) If the partners fail to comply with such a demand, the court, on application by any other party, may order the partners to furnish him with such a statement and to verify it on oath and may direct that in default—

- (a) if the partners are plaintiffs, the proceedings be stayed on such terms as the court thinks fit, or
- (b) if the partners are defendants, they be debarred from defending the action.

(4) When the names and places of residence of the partners have been stated in compliance with a demand or order under this rule, the proceedings shall continue in the name of the firm.

Defendant carrying on business in another name

10.—(1) A person carrying on business in England or Wales in a name other than his own name may be sued—

- (a) in his own name, followed by the words “trading as A.B.”, or
- (b) in his business name, followed by the words “(a trading name)”.

(2) Where a person is sued in his business name in accordance with paragraph (1)(b), the provisions of these rules relating to actions against firms shall, subject to the provisions of any enactment, apply as if he were a partner and the name in which he carries on business were the name of his firm.

Change of parties by reason of assignment etc

11.—(1) Where, at any stage of the proceedings in an action or matter, the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the court may, for the purpose of ensuring that all matters in dispute in the action or matter may be effectually and completely disposed of, order that other person to be made a party to the action or matter and the proceedings to be carried on as if he had been substituted for the first mentioned party.

(2) An application for an order under paragraph (1) may be made ex parte by filing a notice stating the grounds on which the application is made.

(3) The notice shall be accompanied by an affidavit verifying the facts stated therein and by as many copies of the notice as there are persons to be served under the next succeeding paragraph.

(4) If an order is made on the application, the proper officer shall, unless the court otherwise directs, serve notice of the order, together with a copy of the notice given under paragraph (2), on every person, other than the applicant, who is a party to the action or matter or who becomes or ceases to be a party by virtue of the order.

(5) In the case of a person who becomes a defendant by virtue of the order, the documents mentioned in paragraph (4) shall be accompanied by a copy of the originating process and shall be served on him in accordance with the provisions of these rules relating to service of the process by which the proceedings were commenced.

(6) Any person served with notice of an order made ex parte under this rule may, within 14 days after service of the order on him, apply for the discharge or the variation of the order, and the notice shall contain a statement to that effect.

(7) Where, by one and the same event, a person becomes entitled to apply for an order under paragraph (1) in more than one action or matter he may give one notice of application only, specifying in a schedule the actions or matters in respect of which it is given, and it shall be sufficient for the proper officer, in serving a copy of the notice on any party, to set out only so much of the notice as affects that party.

Failure to proceed after death of party

12.—(1) If, after the death of a plaintiff or defendant in any action or matter, the cause of action survives but no order is made under rule 11 substituting any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the court for an order that unless the action or matter is proceeded with within such time as may be specified in the order the action shall be struck out as against the plaintiff or defendant who has died; but where it is the plaintiff who has died, the court shall not make an order unless satisfied that notice of the application has been given to the personal representatives (if any) of the deceased plaintiff and to any other interested person who the court considers should be notified.

(2) Where a counterclaim is made by a defendant to any action, this rule shall apply in relation to the counterclaim as if the counterclaim were a separate action and as if the defendant making the counterclaim were a plaintiff and the person against whom it is made a defendant.

Claim to money in court where change in parties after judgment

13.—(1) Where any change has taken place after judgment, by death, assignment or otherwise, in the parties to any action or matter and there is money standing in court to the credit of the action or matter, any person claiming to be entitled to the money may give to the proper officer notice of his claim, accompanied by an affidavit verifying the facts stated in the notice.

(2) The registrar may, if satisfied as to the entitlement of the person giving the notice, cause the money to be paid to him or may refer the claim to the judge and may require the claimant to give notice of the claim to any other person.

(3) It shall not be necessary for notice to be given under this rule where the person claiming to be entitled to the money in court has obtained leave under Order 26, rule 5, to issue a warrant of execution.

Bankruptcy of plaintiff

14. Rules 11 and 13 shall not apply to any case for which provision is made by section 82 of the Act.