

1972. No. 151

[NC]

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

Rules of the Supreme Court (Northern Ireland) (No. 3) 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. Order 19 of the Rules of the Supreme Court (Northern Ireland) 1936(b) shall be amended as follows—

(1) in rule 4 for the words “Every pleading” there shall be substituted the words “Subject to the provisions of rule 4A, every pleading”, and

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

“4A.—(1) If in any action which is to be tried with pleadings any party intends, in reliance on section 7 of the Civil Evidence Act (Northern Ireland) 1971, to adduce evidence that a person was convicted of an offence by or before a court in the United Kingdom or by a court-martial there or elsewhere, he must include in his pleading a statement of his intention with particulars of—

(a) the conviction and the date thereof,

(b) the court or court-martial which made the conviction, and

(c) the issue in the proceedings to which the conviction is relevant.

(2) If in any action which is to be tried with pleadings any party intends, in reliance on section 8 of the said Act of 1971, to adduce evidence that a person was found guilty of adultery in matrimonial proceedings or was adjudged to be the father of a child in affiliation proceedings before a court in the United Kingdom, he must include in his pleading a statement of his intention with particulars of—

(a) the finding or adjudication and the date thereof,

(b) the court which made the finding or adjudication and the proceedings in which it was made, and

(c) the issue in the proceedings to which the finding or adjudication is relevant.

(3) Where a party's pleading includes such a statement as is mentioned in paragraph (1) or (2), then if the opposite party—

(a) denies the conviction, finding of adultery or adjudication of paternity to which the statement relates, or

(b) alleges that the conviction, finding or adjudication was erroneous, or

(c) denies that the conviction, finding or adjudication is relevant to any issue in the proceedings,

he must make the denial or allegation in his pleading.

(4) This rule shall not apply to evidence intended to impeach the credit of a party or witness."

2. In Order 36 immediately after item (f) of paragraph (1) of rule 23, there shall be added the following item—

"(g) any notice given pursuant to Part VI of Order 37."

3. In Order 37 immediately after rule 47 there shall be inserted the Part set out in the Schedule hereto.

4. In paragraph (3) of rule 16 of Order 59, for the reference to "rule 8(b)" there shall be substituted a reference to "rule 9".

5. In Order 60A, rule 1(1) shall be amended by the insertion immediately after item (x) of the following item—

"(xA) to specify the time for the purposes of Order 37, rule 49(1)(b);"

6. Order 74 shall be amended as follows—

(1) in paragraph (1) of rule 126, after the words "employed by the official liquidator", there shall be added the following item—

"Next—such costs and expenses of enforcement of a judgment against the company as are payable under section 84(1) of the Judgments (Enforcement) Act (Northern Ireland) 1969, when ordered by the Court."

(2) immediately after rule 130A there shall be added the following rule—

"**130B.** Such costs and expenses of enforcement of a judgment against the company as are payable under section 84(1) of the Judgments (Enforcement) Act (Northern Ireland) 1969 shall be paid out of the assets of the company next in priority after the costs charges and expenses of winding-up payable under section 278 of the Act."

7. These rules may be cited as the Rules of the Supreme Court (Northern Ireland) (No. 3) 1972 and shall come into force on 1st September 1972.

Dated 30th June 1972.

(Signed) *Robert Lowry*

L. E. Curran

H. A. McVeigh

Maurice W. Gibson

Turlough O'Donnell

Donald Murray

E. Malachy Doris

SCHEDULE

RULE 3

Part to be inserted after Order 37, rule 47, of the Rules of the Supreme Court

VI EVIDENCE ADMISSABLE UNDER PART I OF THE CIVIL EVIDENCE ACT (NORTHERN IRELAND) 1971

Interpretation and application

48.—(1) In this Part of this Order “the Act” means the Civil Evidence Act (Northern Ireland) 1971 and “the Court” means the Court or a Judge thereof.

(2) Any expressions used in this Part of this Order and in Part I of the Act have the same meanings in this Part of this Order as they have in the said Part I.

(3) This Part of this Order shall apply in relation to the trial or hearing of an issue or question arising in a cause or matter, and to a reference, inquiry and assessment of damages, as it applies in relation to the trial or hearing of a cause or matter.

Notice of intention to give in evidence statement under section 1 or 2 of the Act

49.—(1) Subject to the provisions of this rule, a party to a cause or matter who desires to give in evidence at the trial or hearing of the cause or matter any statement contained in a document which is admissible in evidence by virtue of section 1 or 2 of the Act must—

(a) in the case of a cause or matter which is required to be set down for trial or hearing or adjourned into court, within 21 days after it is set down or so adjourned, or within such other period as the Court may specify, and

(b) in the case of any other proceedings within such period as the Court may specify after the commencement of the proceedings,

serve on every other party to the cause or matter notice of his desire to do so, and the notice must comply with the provisions of rule 50 or 51, as the circumstances of the case require.

(2) Paragraph (1) shall not apply in relation to any statement contained in a document which any party to a probate action desires to give in evidence at the trial of that action and which is alleged to have been made by the deceased person whose estate is the subject of the action.

(3) Where by virtue of any provision of these rules or of any order or direction of the Court the evidence in any proceedings is to be given by affidavit then paragraph (1) shall not apply in relation to any statement contained in a document which any party to the proceedings desires to have included in any affidavit to be used on his behalf in the proceedings, but nothing in this paragraph shall affect the operation of Order 38, rule 4, or the powers of the Court under Order 37, rule 1.

(4) Unless the Court otherwise directs, paragraph (1) shall not apply in relation to any statement contained in a document which is admissible by virtue of section 1 or 2 of the Act and which an applicant for judgment in default of appearance in admiralty proceedings under Order 13, rule 14, desires to give in evidence at the hearing.

Statement admissible by virtue of section 1 of the Act: contents of notice

50.—(1) If the statement contained in a document is admissible by virtue of section 1 of the Act, the notice must have annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and must contain—

(a) particulars of—

- (i) the person by whom the record containing the statement was compiled;
- (ii) the person who originally supplied the information from which the record was compiled; and
- (iii) any other person through whom that information was supplied to the compiler of that record;

and, in the case of any such person as is referred to in (i) or (iii) above, a description of the duty under which that person was acting when compiling that record or supplying information from which that record was compiled, as the case may be;

- (b) if not apparent on the face of the document annexed to the notice, a description of the nature of the record which, or part of which, contains the statement; and
- (c) particulars of the time, place and circumstances at or in which that record or part was compiled.

(2) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 52, the notice must contain a statement to that effect specifying the reason relied on.

Statement admissible by virtue of section 2 of the Act: contents of notice

51.—(1) If the statement is contained in a document produced by a computer and is admissible by virtue of section 2 of the Act, the notice must have annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and must contain particulars of—

- (a) a person who occupied a responsible position in relation to the management of the relevant activities for the purposes of which the computer was used regularly during the material period to store or process information;
- (b) a person who at the material time occupied such a position in relation to the supply of information to the computer, being information which is reproduced in the statement or information from which the information contained in the statement is derived;
- (c) a person who occupied such a position in relation to the operation of the computer during the material period;

and where there are two or more persons who fall within any of the foregoing subparagraphs and some only of those persons are at the date of service of the notice capable of being called as witnesses at the trial or hearing, the person particulars of whom are to be contained in the notice must be such one of those persons as is at that date so capable.

(2) The notice must also state whether the computer was operating properly throughout the material period and, if not, whether any respect in which it was not operating properly or was out of operation during any part of that period was such as to affect the production of the document in which the statement is contained or the accuracy of its contents.

(3) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 52, the notice must contain a statement to that effect specifying the reason relied on.

Reasons for not calling a person as a witness

52. The reasons referred to in rules 50(2) and 51(3) are that the person in question is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as a witness or that despite the exercise of reasonable diligence it has not been possible to identify or find him or that he cannot reasonably be expected to have any recollection of matters relevant to the accuracy or otherwise of the statement to which the notice relates.

Counter-notice requiring person to be called as a witness

53.—(1) Subject to paragraphs (2) and (3), any party to a cause or matter on whom a notice under rule 49 is served may within 21 days after service of the notice on him serve on the party who gave the notice a counter-notice requiring that party to call as a witness at the trial or hearing of the cause or matter any person (naming him) particulars of whom are contained in the notice.

(2) Where any notice under rule 49 contains a statement that any person particulars of whom are contained in the notice cannot or should not be called as a witness for the reason specified therein, a party shall not be entitled to serve a counter-notice under this rule requiring that person to be called as a witness at the trial or hearing of the cause or matter unless he contends that that person can or, as the case may be, should be called, and in that case he must include in his counter-notice a statement to that effect.

(3) Where a statement to which a notice under rule 49 relates is one to which rule 55 applies, no party on whom the notice is served shall be entitled to serve a counter-notice under this rule in relation to that statement, but the foregoing provision is without prejudice to the right of any party to apply to the Court under rule 55 for directions with respect to the admissibility of that statement.

(4) If any party to a cause or matter by whom a notice under rule 49 is served fails to comply with a counter-notice duly served on him under this rule, then, unless any of the reasons specified in rule 52 applies in relation to the person named in the counter-notice, and without prejudice to the powers of the Court under rule 56, the statement to which the notice under rule 49 relates shall not be admissible at the trial or hearing of the cause or matter as evidence of any fact stated therein by virtue of section 1 or 2 of the Act, as the case may be.

Determination of question whether a person can or should be called as a witness

54.—(1) Where in any cause or matter a question arises whether any of the reasons specified in rule 52 applies in relation to a person particulars of whom are contained in a notice under rule 49, the Court may, on the application by summons of any party to the cause or matter, determine that question before the trial or hearing of the cause or matter or give directions for it to be determined before the trial or hearing and for the manner in which it is to be so determined.

(2) Unless the Court otherwise directs, the summons by which an application under paragraph (1) is made must be served by the party making the application on every other party to the cause or matter.

(3) Where any such question as is referred to in paragraph (1) has been determined under or by virtue of that paragraph, no application to have it determined afresh at the trial or hearing of the cause or matter may be made unless the evidence which it is sought to adduce in support of the application could not with reasonable diligence have been adduced at the hearing which resulted in the determination.

Directions with respect to statement made in previous proceedings

55. Where a party to a cause or matter has given notice in accordance with rule 49 that he desires to give in evidence at the trial or hearing of the cause or matter a statement falling within section 1(1) of the Act which is contained in a record of direct oral evidence given in some other legal proceedings (whether civil or criminal), any party to the cause or matter may apply to the Court for directions under this rule, and the Court hearing such an application may give directions as to whether, and if so on what conditions, the party desiring to give the statement in evidence will be permitted to do so and (where applicable) as to the manner in which that statement and any other evidence given in those other proceedings is to be proved.

Power of Court to allow statement to be given in evidence

56.—(1) Without prejudice to section 1(2)(a) of the Act and rule 55, the Court may, if it thinks it just to do so, allow a statement falling within section 1(1) or 2(1) of the Act to be given in evidence at the trial or hearing of a cause or matter notwithstanding—

- (a) that the statement is one in relation to which rule 49(1) applies and that the party desiring to give the statement in evidence has failed to comply with that rule, or
- (b) that that party has failed to comply with any requirement of a counter-notice relating to that statement which was served on him in accordance with rule 53.

(2) Without prejudice to the generality of paragraph (1), the Court may exercise its powers under that paragraph to allow a statement to be given in evidence at the trial or hearing of a cause or matter if a refusal to exercise that power might oblige the party desiring to give the statement in evidence to call as a witness at the trial or hearing an opposite party or a person who is or was at the material time the servant or agent of an opposite party.

Restriction on adducing evidence as to credibility of supplier of information, etc.

57. Where—

- (a) a notice given under rule 49 in a cause or matter relates to a statement which is admissible by virtue of section 1 of the Act; and
- (b) the person who originally supplied the information from which the record containing the statement was compiled, is not called as a witness at the trial or hearing of the cause or matter, and
- (c) none of the reasons mentioned in rule 52 applies so as to prevent the party who gave the notice from calling that person as a witness,

no other party to the cause or matter shall be entitled, except with the leave of the Court, to adduce in relation to that person any evidence which could otherwise be adduced by him by virtue of section 4 of the Act unless he gave a counter-notice under rule 53 in respect of that person or applied under rule 55 for a direction that that person be called as a witness at the trial or hearing of the cause or matter.

Notice required of intention to give evidence of certain inconsistent statements

58.—(1) Where a person, particulars of whom were contained in a notice given under rule 49 in a cause or matter, is not to be called as a witness at the trial or hearing of the cause or matter, any party to the cause or matter who is entitled and intends to adduce in relation to that person any evidence which is admissible for the purpose mentioned in section 4(1)(b) of the Act must, not more than 21 days after service of that notice on him, serve on the party who gave that notice, notice of his intention to do so.

(2) If the statement sought to be adduced was made otherwise than in a document, the notice must contain particulars of—

- (a) the time, place and circumstances at or in which the statement was made;
- (b) the person by whom, and the person to whom the statement was made; and
- (c) the substance of the statement or, if material, the words used.

(3) If the statement sought to be adduced was made in a document, a copy or transcript of the document, or of the relevant part thereof, must be annexed to the notice and the notice must contain such (if any) of the particulars mentioned in paragraph 2(a) and (b) as are not apparent on the face of the document or part.

(4) The Court may, if it thinks it just to do so, allow a party to give in evidence at the trial or hearing of a cause or matter any evidence which is admissible for the purpose mentioned in the said section 4(1)(b) notwithstanding that that party has failed to comply with the provisions of paragraph (1).

Costs

59. If—

- (a) a party to a cause or matter serves a counter-notice under rule 53 in respect of any person who is called as a witness at the trial of the cause or matter in compliance with a requirement of the counter-notice, and
- (b) it appears to the Court that it was unreasonable to require that person to be called as a witness,

then, without prejudice to Order 65, rule 14, the Court may direct that any costs to that party in respect of the preparation and service of the counter-notice shall not be allowed to him and that any costs occasioned by the counter-notice to any other party shall be paid by him to that other party.

EXPLANATORY NOTE

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

These rules amend the Rules of the Supreme Court (Northern Ireland) 1936, and come into force on 1st September 1972.

Rules 1, 2, 3 and 5 are made in pursuance of the Civil Evidence Act (Northern Ireland) 1971. Rule 1 specifies the particulars to be included in a pleading where it is intended to put in evidence (by virtue of section 7 or 8 of the Act) a previous conviction, finding of adultery or adjudication of paternity.

Rules 3 adds a new Part VI to Order 37, prescribing the procedure where it is intended to adduce certain documentary evidence under Part I of the Act. Rules 2 and 5 make consequential amendments.

Rules 4 and 6 make minor amendments to Orders 59 and 74 respectively.