

1972. No. 316

[NC]

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

Rules of the Supreme Court (Northern Ireland) (No. 4) 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. Immediately after Order 3 of the Rules of the Supreme Court (Northern Ireland) 1936(b) there shall be inserted the Order set out in Schedule 1 hereto.

2. In Order 3, rule 10 shall be revoked.

3. Order 13 shall be amended as follows—

- (1) the proviso to rule 3 shall be deleted, and
- (2) rule 17 shall be revoked.

4. In Order 20, rule 11 shall be revoked.

5. Order 27 shall be amended as follows—

- (1) the proviso to rule 2 shall be deleted, and
- (2) rule 18 shall be revoked.

6. In Order 60A, rule 1(1), for items (v) and (viii) there shall be substituted the following items in the places appropriate to their numbers—

- “(v) applications under Order 13, rules 1, 19 and 20 (default of appearance);
- (viii) applications under Order 27, rules 20 and 21 (moneylenders and hire-purchase actions);
- (xvii) applications by mortgagees or chargeants under Order 55, rule 7, for payment of moneys secured by a mortgage or charge or for the delivery of possession or property subject to a mortgage or charge;”

7. In Order 84, for rules 148 to 160, there shall be substituted the rules set out in Schedule 2 hereto in the places appropriate to their numbers.

8. In Order 91, immediately after the definition of “Direction”, there shall be inserted the following definition—

“Entry of judgment’ means the filing of judgment in accordance with Order 41.”

(a) 10 & 11 Eliz. 2. c. 30.

(b) S.R. & O. 1936, No. 70 (II, p. 2559).

9. Appendix V shall be amended as follows—

- (1) for Form 75 there shall be substituted the Form 75 set out in Schedule 3 hereto,
- (2) immediately after Form 75 there shall be inserted the Form 75A set out in Schedule 3 hereto,
- (3) for Forms 77 and 78 there shall be substituted the Form 77 set out in Schedule 3 hereto.

10. These rules may be cited as the Rules of the Supreme Court (Northern Ireland) (No. 4) 1972 and shall come into force on 1st January 1973.

Dated 6th November 1972.

(Signed) *Robert Lowry.*

L. E. Curran

E. W. Jones

Maurice W. Gibson

Turlough O'Donnell

Donald Murray.

SCHEDULE 1

RULE 1

Order to be inserted after Order 3 of the Rules of the Supreme Court

ORDER 3A

MONEYLENDERS' ACTIONS

Application and interpretation

1.—(1) These rules apply to a moneylender's action subject to the following rules of this Order.

(2) In these rules—

“moneylender” has the meaning assigned to it by section 6 of the Money-lenders Act 1900,

“moneylender's action” means an action for the recovery of money lent by a moneylender or any interest thereon or for the enforcement of any agreement or security relating to money so lent, being an action brought by the moneylender or an assignee.

Indorsement of writ

2. Before a writ beginning a moneylender's action is issued it must be indorsed with a statement that at the time of the making of the loan or contract or the giving of the security in question the lender was licensed as a moneylender.

Particulars to be included in statement of claim

3. Every statement of claim in a moneylender's action (whether indorsed on the writ or not) must state—

- (a) the date on which the loan was made,
- (b) the amount actually lent to the borrower,
- (c) the rate per cent. per annum of interest charged,
- (d) the date when the contract for repayment was made,
- (e) the fact that a note or memorandum of the contract was made and was signed by the borrower,
- (f) the date when a copy of the note or memorandum was delivered or sent to the borrower,
- (g) the amount repaid,
- (h) the amount due but unpaid,
- (i) the date upon which such unpaid sum or sums became due, and
- (j) the amount of interest accrued due and unpaid on every such sum.

Judgment in default of appearance or of defence

4.—(1) In a moneylender's action judgment in default of appearance or in default of defence shall not be obtained except with the leave of the Court.

(2) An application for the grant of leave under this rule must be made by summons, and the summons must be served on the defendant personally or by recorded delivery addressed to him at his last known address.

(3) If the application is for leave to enter judgment in default of appearance, the summons shall not be issued until after the time limited for appearing has expired, and a proper affidavit of service of the writ has been filed.

(4) On the hearing of such an application, whether the defendant appears or not, the Court—

- (a) may exercise the powers of the Court under section 1(1) of the Moneylenders Act 1900, as extended by section 10 of the Moneylenders Act (Northern Ireland) 1933,
- (b) where it refuses leave under this rule to enter judgment on a claim or any part of a claim, may make or give any such order or directions as it might have made or given had the application been an application under Order 14, rule 1, for judgment on the claim.

SCHEDULE 2

RULE 7

Rules to be inserted in place of rules 148 to 160 of Order 84 of the Rules of the Supreme Court

HABEAS CORPUS

Applications for writ of habeas corpus ad subjiciendum

148.—(1) An application for a writ of *habeas corpus ad subjiciendum* may be made to the Court or a Judge, provided that every application for such writ on a warrant of extradition shall, during the sittings, be made to a Divisional Court.

(2) An application for such writ may be made *ex parte* to a Judge or by motion to a Divisional Court and, subject to paragraph (3), must be supported by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.

(3) Where the person restrained is unable for any reason to make the affidavit required by paragraph (2), the affidavit may be made by some other person on his behalf and that affidavit must state that the person restrained is unable to make the affidavit himself and for what reason.

Powers of a single Judge

149.—(1) A Judge to whom an application is made *ex parte* may make an order forthwith for the writ to issue, or may direct that a notice of motion for the writ be issued, or that an application therefor be made by motion to a Divisional Court.

(2) On an application for a writ of *habeas corpus ad subjiciendum* in a criminal cause or matter an order for the release of a person restrained shall not be refused by a Judge.

Service of notice of motion

150. The notice of motion must be served on the person against whom the issue of the writ is sought and on such other persons as the Court or Judge may direct, and, unless the Court or Judge otherwise directs, there must be at least 8 clear days between the service of the notice and the date named therein for the hearing of the application.

Copies of affidavits to be supplied

151. Every party to an application under rule 148 must supply to every other party copies of the affidavits which he proposes to use at the hearing of the application.

Powers to order release of person restrained

152. Without prejudice to rule 149, the Court or Judge hearing an application for a writ of *habeas corpus ad subjiciendum* may in its or his discretion order that the person restrained be released, and such order shall be sufficient warrant to any governor of a prison, constable or other person for the release of the person under restraint.

Directions as to return to writ

153. Where a writ of *habeas corpus ad subjiciendum* is ordered to issue, the Court or Judge by whom the order is made shall give directions as to the Court or Judge before whom, and the date on which, the writ is returnable.

Service of writ and notice

154.—(1) Subject to paragraphs (2) and (3), the original writ of *habeas corpus ad subjiciendum* must be served personally on the person to whom it is directed.

(2) If it is not possible to serve such writ personally, or if it is directed to a governor of a prison or other public official, it must be served either by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained or otherwise as the Court or Judge may direct.

(3) If the writ is directed to more than one person, the writ must be served in manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.

(4) There must be served with the writ a notice, in Form 75A in Appendix V, stating the Court or Judge before whom and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

Disobedience of writ

155. If a writ of *habeas corpus ad subjiciendum* be disobeyed by the person to whom it is directed, an application may be made to the Court or a Judge on an affidavit of service and disobedience for a peremptory order under Order 44, rule 5, requiring the person in default to show cause why an order of committal for contempt of court shall not be made against him.

Return to the writ

156.—(1) The return to a writ of *habeas corpus ad subjiciendum* must be endorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.

(2) The return may be amended, or another return substituted therefor, by leave of the Court or Judge before whom the writ is returnable.

Procedure at hearing of writ

157. When a return to a writ of *habeas corpus ad subjiciendum* is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where the person is brought up in accordance with the writ, his counsel shall be heard first, then the counsel for the Crown, and then one counsel for the person restrained in reply.

Bringing up prisoner to give evidence, etc.

158.—(1) An application for a writ of *habeas corpus ad testificandum* or of *habeas corpus ad respondendum* must be made ex parte on affidavit to a Judge.

(2) An application for an order to bring up a prisoner, otherwise than by writ of *habeas corpus*, to give evidence in any cause or matter, civil or criminal, before any court or tribunal must be made ex parte on affidavit to a Judge.

SCHEDULE 3

RULE 9

Forms to be inserted in Appendix V of the Rules of the Supreme Court

No. 75

WRIT OF HABEAS CORPUS AD SUBJICIENDUM

ELIZABETH THE SECOND &c.,

TO

greeting:

WE COMMAND YOU that you have in the Queen's Bench Division of Our High Court of Justice in Northern Ireland, at Belfast, on the day and at the time specified in the notice served with this writ, the body of A.B. being taken and detained under your custody as is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called therein, that Our Court [*or Judge*] may then and there examine and determine whether such cause is legal, and have you there then this writ.

Witness &c.

Indorsement

By order of Court [*or of Mr. Justice*]

This writ was issued by &c.

No. 75A

NOTICE TO BE SERVED WITH WRIT OF HABEAS CORPUS AD SUBJICIENDUM

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
 QUEEN'S BENCH DIVISION (CROWN SIDE)

[If in a cause already begun, here insert the title, not otherwise]

WHEREAS THIS COURT [or the Honourable Mr. Justice]
 has granted a writ of *habeas corpus ad subjiciendum* directed to
 commanding him to have the body of A.B. before the said
 Court [or Judge] on the day and at the time specified in the notice together
 with the day and cause of his being taken and detained.

TAKE NOTICE that you are required by the said writ to have the body
 of the said A.B. before this Court [or before the Judge aforesaid]
 on the day of 19
 at o'clock in the noon and to make a return to the said writ.
 In default thereof the said Court or Judge will then, or so soon thereafter as
 counsel can be heard, be moved to commit you to prison for your contempt
 in not obeying the said writ.

Dated the day of 19

(Signed)

of

Solicitor for

To:

No. 77

WRIT OF HABEAS CORPUS AD RESPONDENDUM

ELIZABETH THE SECOND &c.

To the Governor of Our prison at

greeting:

WE COMMAND YOU that you have before [*description of Court*]
on the day of 19 , at
the body of being committed and
detained in Our prison under your custody, as it is said, together with the
day and cause of his being taken and detained, by whatsoever name he may
be called, then and there to answer to a charge of
to be then and there made against him, and so from day to day until
he shall have answered the said charge, and to be dealt with according
to law. And have you then and there this writ.

Witness &c.

Indorsement

[As in No. 75]

EXPLANATORY NOTE

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

These rules, which come into force on 1st January 1973, amend the Rules of the Supreme Court (Northern Ireland) 1936.

Rule 1 inserts a new Order 3A which embodies all the rules relating to moneylender's actions. Rule 4 of this Order contains an important departure from the present practice whereby leave to enter judgment in default of appearance or defence is only required for a period of twelve months from the date of the writ. Leave is now required in all cases.

The amendments to Order 60A made by rule 6 enable the jurisdiction of the Chancery Judge to make an order for possession of mortgaged property or for the payment of monies secured by a mortgage on an application by the mortgagee by originating summons under Order 55, rule 7, to be exercised by a Registrar. Similarly, the powers of the Chancery Judge under Order 13, rule 20, and Order 27, rule 21, to give leave to enter judgment in default of appearance or defence in an action by writ claiming such relief will be exercisable by a Registrar.

Rule 7 amends Order 84 by substituting for rules 148 to 160 the rules set out in Schedule 2. These rules relate to applications for a writ of habeas corpus and give effect to the present practice on applications for the writ. No changes of substance have been made. The practice whereby an application for the writ must be supported by an affidavit by the person restrained is now set out in rule 148(2).

The opportunity has been taken to define "entry of judgment".