

1972. No. 64

[NC]

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

Rules of the Supreme Court (Northern Ireland) (No. 2) 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. In Order 16 of the Rules of the Supreme Court (Northern Ireland) 1936(b), immediately after rule 47C, there shall be inserted the following Part—

“V. PROCEEDINGS AGAINST ESTATES

48.—(1) Where any person against whom an action would have lain 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 defendant who has died shall, if the cause of action survives and no grant of probate or administration has been made, be treated as having been brought against his estate in accordance with paragraph (1).

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

(a) the plaintiff shall, during the period of validity for service of the writ or originating 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 since the commencement of the action, 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 sub-paragraph (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.

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

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

(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) The person on whose application an order under paragraph (4) is made or, where an order is made by the Court of its own motion, the plaintiff, must procure the order to be noted in the cause book, and after the order has been so noted that person must, unless the Court otherwise directs, serve the order on every other person who is a party to the cause or matter or who becomes or ceases to be a party by virtue of the order and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun.

(7) Where by an order under paragraph (4) a person is to be made a defendant—

(a) the rules as to entry of appearance shall apply accordingly to entry of appearance by him subject to the modification that the time limited for appearing shall begin on the date on which the order is served on him under paragraph (6) or, if the order is not required to be served on him, the date on which the order is noted in the cause book;

(b) that person shall not become a party until the order has been served on him, or, if the order is not required to be served on him, the order has been noted in the cause book.

(8) 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.

(9) In this rule "the Court" means the Court or a Judge thereof."

2. Order 78 shall be revoked.

3. These rules may be cited as the Rules of the Supreme Court (Northern Ireland) (No. 2) 1972 and shall come into force on 1st May 1972.

Dated 9th March 1972.

(Signed) *L. E. Curran*
Maurice W. Gibson
Turlough O'Donnell
Donald Murray
W. J. Jefferson

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. Rule 1 makes provision for facilitating proceedings against the estates of deceased persons under the Proceedings against Estates Act (Northern Ireland) 1971. Rule 2 revokes Order 78 consequent on the passing of the Powers of Attorney Act (Northern Ireland) 1971.