1967 No. 276 (L. 1)

COUNTY COURTS

PROCEDURE

The County Court (Amendment) Rules 1967

Made - - - 23*rd February* 1967

Coming into Operation 20*th March* 1967

1.—(1) These Rules may be cited as the County Court (Amendment) Rules 1967.

(2) In these Rules an Order and Rule referred to by number means the Order and Rule so numbered in the County Court Rules 1936(a), as amended(b), " Appendix A " means Appendix A to those Rules and a Form referred to by number means the Form so numbered in that Appendix.

(3) The Interpretation Act 1889(c) shall apply for the interpretation of these Rules as it applies for the interpretation of an Act of Parliament.

2. In Order 1, Rule 2(2)(*c*), after the word "before" there shall be inserted "the bank holiday next following".

Enforcement of charging order on securities

3. The following Rule shall be inserted in Order 2 after Rule 2:—

"2A. Proceedings for enforcing a charge imposed on securities under Order 25, Rule 6A, shall be commenced in the court in which the order imposing the charge was made."

4. For sub-paragraphs (*e*) and (*f*) of Order 6, Rule 4(2), there shall be substituted the following sub-paragraph:—

"(*e*) Order 8, Rule 29, and paragraphs (1) to (5) of Order 8, Rule 31, shall apply to an originating application as if—

(i) for any reference to an ordinary summons, plaint or praecipe there were substituted a reference to an originating application,

(ii) in proviso (*a*) to the said Rule 29 after the words "the copy" there were inserted the words "of Form 26", and

(iii) in proviso (*b*) to the said Rule 29 for the words from "on the plaintiff" to the end there were substituted the words "if the originating application as amended could have been commenced in that court".

5. Order 8 shall be amended as follows:—

(1) The following Rule shall be substituted for Rule 11:—

Solicitor accepting service

"11. Where a solicitor indorses on the copy of an ordinary summons

(a) S.R. & O. 1936/626 (1936 I, p. 282).

(b) The relevant amending instruments are S.R. & O. 1938/18, S.I. 1950/1231, 1954/1675, 1956/1851, 1958/2226, 1959/1251, 1962/1293 and 1965/2147 (1938 I, p. 977; 1950 I, p. 400; 1954 I, p. 541; 1956 I, p. 545; 1958 I, p. 372; 1959 I, p. 795; 1962 II, p. 1383; 1965 III, p. 6292).

(c) 1889 c. 63.

which is to be retained by the person effecting service a memorandum, signed and dated by the solicitor, stating that he accepts service of the summons on behalf of a defendant and giving an address for service, the summons shall be deemed to have been duly served on that defendant and to have been so served on the date on which the indorsement was made."

(2) In Rule 29 for the words from the beginning to "an amended praecipe" there shall be substituted the following words:—

"Where an ordinary summons has not been served, it may be amended on the plaintiff filing an amended praecipe, notwithstanding that the amendment consists of the substitution of a defendant:"

6. In Order 15, Rule 2, the words "ordered to be" shall be omitted.

7. In Order 17, Rule 1, for the word "judge" there shall be substituted the word "court" and for the word "his" there shall be substituted the word "its".

8. Order 24, Rule 15, shall be amended as follows:—

(1) For the figure "£2", wherever it appears, there shall be substituted the figure "£3".

(2) At the end of paragraph (*c*) there shall be added the word "or" and after paragraph (*c*) there shall be inserted the following paragraph:—

"(*d*) is for the whole amount or the balance of the amount in respect of which a judgment summons has been issued to enforce the judgment or order."

(3) At the end of the Rule after the word "money" there shall be added the words "unless, in a case to which paragraph (*a*), (*b*) or (*c*) applies, the money is to be paid out pursuant to County Court Funds Rules without any demand or request by the person entitled thereto".

9. Order 25 shall be amended as follows:—

(1) The following Rule shall be inserted after Rule 6:—

Charging order on securities

"6A.—(1) A charge for securing payment of an ascertained sum of money due or to become due under a judgment or order of a court may, by order of the judge or, with the leave of the judge, the registrar of that court, be imposed on any interest to which the judgment debtor is beneficially entitled in the following securities, namely—

(*a*) any government stock and any stock of any company registered under any general Act of Parliament, and

(*b*) any dividend of or interest payable on such stock.

In this paragraph "government stock" means any stock issued by Her Majesty's Government in the United Kingdom or any funds of or annuity granted by that government, and "stock" includes shares, debentures and debenture stock.

(2) An application for an order under the preceding paragraph shall be made on notice.

Form 366 (3) The order shall be in Form 366 and the charge imposed thereby shall have the same effect, and the judgment creditor shall, subject to paragraph (5) of this Rule, have the same remedies for enforcing it, as if it were a valid charge effectively made by the judgment debtor.

(4) The order shall be served on the judgment debtor and—

(*a*) where the order relates to government stock, on the Bank of England, or

(*b*) where the order relates to other stock, on the company concerned.

(5) No proceedings to enforce the charge shall be taken until the expiration of six months from the date of the order.

(6) The judge or, if the order was made by the registrar, the registrar may, on the application of the judgment debtor or any other person interested in the securities to which the order relates, at any time discharge or vary the order on such terms (if any) as to costs as he thinks just."

(2) In Rule 13A(2)(*c*), for the words "an office copy" there shall be substituted the words "a copy".

(3) In Rule 37(*c*), for the words "an office copy" there shall be substituted the words "a copy".

(4) In Rule 68(1), the words "is for the delivery of goods without the option of paying their value or" and the proviso shall be omitted.

10. The following Order shall be inserted after Order 45:—

"ORDER 45A

APPLICATION FOR MAINTENANCE OUT OF DECEASED PERSON'S ESTATE UNDER THE INHERITANCE (FAMILY PROVISION) ACT 1938 OR THE MATRIMONIAL CAUSES ACT 1965

Interpretation 1938 c.45 1952 c.64 1966 c.35 1. In this Order—

"the Act of 1938" means the Inheritance (Family Provision) Act 1938, as amended by the Intestates' Estates Act 1952 and the Family Provision Act 1966;

1965 c.72 "the Act of 1965" means the Matrimonial Causes Act 1965, as amended by the said Act of 1966;

"the deceased" means the person to whose estate an application under section 1 of the Act of 1938 or section 26 of the Act of 1965 relates.

Mode of application Form 370 2.—(1) An application under section 1 of the Act of 1938 or section 26 of the Act of 1965 shall be made by originating application in Form 370.

(2) The application shall be filed—

(*a*) in the court for the district in which the deceased resided at the date of his death, or

(*b*) if the deceased did not then reside in England or Wales, in the court for the district in which the respondent or one of the respondents resides or carries on business or the estate or part of the estate is situate, or

(*c*) if neither of the foregoing sub-paragraphs is applicable, in the court for the district in which the applicant resides or carries on business.

(3) The applicant shall file with his originating application—

(*a*) an official copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof, and

(*b*) in the case of an application under section 26 of the Act of 1965, a sealed copy of the decree by which the applicant's marriage to the deceased was dissolved or annulled.

Parties

3.—(1) Without prejudice to its powers under Orders 5 and 15 the court may, at any stage of the proceedings, direct that any person be added or struck out as a party to the application.

(2) Order 5, Rules 10 and 26, shall apply to an application under the Act of 1938 or section 26 or 27 of the Act of 1965 as it applies to the proceedings mentioned in those Rules, with the modification that for the word "judge" in the said Rule 26 there shall be substituted the word "court".

Answer

4.—(1) Every respondent shall, within 21 days after the service of the originating application on him, inclusive of the day of service, file in the court office an answer, together with a copy thereof for every other party to the proceedings, which shall contain a statement of the respondent's case and, where the respondent is a personal representative, full particulars of the value of the deceased's net estate, the persons or classes of persons beneficially interested therein (including the names and addresses of all known beneficiaries and whether any of them is to the knowledge of the respondent an infant or a mental patient) and the value of their interests so far as ascertained.

(2) The registrar shall send a copy of the answer to every other party to the proceedings.

Interim order

5. An application for an interim order under section 4A of the Act of 1938 or section 28A of the Act of 1965 may be made on notice in accordance with Order 13, Rule 1.

Subsequent application

6. Where an order has been made on an application under section 1 of the Act of 1938 or section 26 of the Act of 1965, any subsequent application, whether made by a party to the proceedings in which such order was made or by or on behalf of such person as is mentioned in section 4(2) of the Act of 1938 or section 27(2) of the Act of 1965, shall be made in those proceedings in accordance with Order 13, Rule 1.

Hearing

7. Any application under the Act of 1938 or section 26 or 27 of the Act of 1965 may, if the judge thinks fit, be heard and determined in chambers.

Production and marking of grant

8.—(1) The personal representatives of the deceased shall produce at the hearing of any application under the Act of 1938 or section 26 or 27 of the Act of 1965 the probate or letters of administration under which the estate is being administered and, if the judge makes an order or interim order on the application or an order dismissing the application, the probate or letters of administration shall remain in the custody of the court until a memorandum of the order has been indorsed thereon or permanently annexed thereto.

(2) Immediately after any such order has been drawn up and filed the registrar shall send a sealed copy thereof, together with the probate or letters of administration, to the Principal Probate Registry."

11. In paragraph 2 of Form 35 sub-paragraph (*f*) shall be omitted and sub-paragraph (*g*) shall stand as sub-paragraph (*f*).

12. In paragraph 4 of Form 175 for the words "an office copy" there shall be substituted the words "a copy".

13. In Forms 267A, 269(1), 269(2), 271 and 279 for the words "all peace officers within the jurisdiction of the Court", where they appear in each form, there shall be substituted the words "every constable within his jurisdiction".

14. Form 366 shall be amended as follows:—

(1) In the title after the word "DEBTOR'S" there shall be inserted the words "SECURITIES OR".

(2) For the words "Rule 7(2)" there shall be substituted the words "Rules 6A(3), 7(2)".

(3) For the words "the land or interest in land of the defendant " there shall be substituted the words "the beneficial interest of the defendant in the securities [*or* the land or interest in land of the defendant]".

15. The following form shall be inserted in Appendix A after Form 369:—

"370

Order 45A, Rule 2(1)

ORIGINATING APPLICATION FOR MAINTENANCE UNDER SECTION 1 OF INHERITANCE (FAMILY PROVISION) ACT 1938 OR SECTION 26 OF THE MATRIMONIAL CAUSES ACT 1965

[*General Title—Form* 1]

1. I, of
apply to the Court for an order under section 1 of the Inheritance (Family Provision) Act 1938 [*or* section 26 of the Matrimonial Causes Act 1965] for reasonable provision to be made for me out of the estate of

who died on the day of 19 ,
being then domiciled in England and resident at .

2. [*In the case of an application under section* 1 *of the Inheritance (Family Provision) Act* 1938] I am the wife [*or* husband] of the deceased [*or state the other relationship by virtue of which you claim to be a dependant of the deceased*].

[*In the case of an application under section* 26 *of the Matrimonial Causes Act* 1965] I was married to the deceased at on the day of 19 . The said marriage was dissolved [*or* annulled] by a decree dated the day of 19 , made by the High Court of Justice (Probate, Divorce and Admiralty Division) (District Registry) [*or as the case may be*], and I have not remarried.

3. A grant of probate [*or* letters of administration] in regard to the estate of the deceased was first taken out on the day of 19 , and the personal representative[s] is[are] of [and of].

4. To the best of my knowledge and belief the value of the deceased's net estate does not exceed £5,000.

5. The disposition of the deceased's estate effected by his will [*or* by the law relating to intestacy] [*or* by the combination of his will and the law relating to intestacy] was such as to make no provision for me [*or* to make the following provision for me, namely].

6. To the best of my knowledge and belief the persons or classes of persons interested in the estate and the nature of their interests are as follows:—

7. The following are particulars of my means:—

8. [*In the case of an application under section* 26 *of the Matrimonial Causes Act* 1965] The following are particulars of every application for a maintenance order made by me during the lifetime of the deceased in proceedings for dissolution or nullity of marriage [*State particulars of every application for an order under section* 16(1) *of the Act* (*or, if you are a former husband of the deceased, for such an order as could be made either under that section as applied by section* 16(3) *or under section* 17(2) *of the Act*), *including the date and effect of any order; and if no such application was made by you, or no order was made on the application, state the reasons why no application was made or, as the case may be, no order was made thereon*].

9. [*Insert where appropriate*] I request the Court's permission to make this application notwithstanding that the period of six months has expired from the date on which representation in regard to the estate of the deceased was first taken out, and the grounds of my request are as follows:—

10. I ask for provision to be made for my maintenance out of the deceased's estate by way of periodical payments [*or* a lump sum payment].

11. The names and addresses of the respondents on whom this application is intended to be served are:—

12. My address for service is:—

Dated this day of 19

Applicant

To the Respondent

Within 21 days after service of this application on you, inclusive of the day of service, you must file in the court office an answer, together with a copy for every other party to the proceedings, containing a statement of your case and (if you are a personal representative of the deceased) full particulars of the value of the deceased's net estate, the persons or classes of persons beneficially interested therein (including the names and addresses of all known beneficiaries and whether any of them is to your knowledge an infant or a mental patient) and the value of their interests so far as ascertained."

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 102 of the County Courts Act 1959(a), having by virtue of the powers vested in us in this behalf made the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

O. Temple-Morris.
D. O. McKee.
S. Granville Smith.
Connolly H. Gage.
Hugh Mais.
W. Ralph Davies.
E. A. Everett.
Philip J. Cox.
Arthur Figgis.
Arthur J. Driver.
A. F. Stapleton Cotton.

I allow these Rules, which shall come into force on 20th March 1967.

Dated 23rd February 1967. *Gardiner*, C.

(a) 1959 c. 22.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules amend the County Court Rules so as—

(1) to prescribe the procedure on an application to the county court under the jurisdiction conferred by section 7 of the Family Provision Act 1966 (Rules 10 and 15);

(2) to give the county court power to make a charging order on securities belonging to a judgment debtor (Rules 3, 9(1) and 14);

(3) to provide for the closing of county court offices on the Friday before the Spring holiday instead of the Friday before Whit Sunday (Rule 2);

(4) to make provision for the substitution of a defendant or respondent in the rules relating to the amendment of a summons or originating application before service (Rules 4, 5(2) and 6);

(5) to enable a summons to be served on a defendant's solicitor by sending instead of delivering it to him (Rules 5(1) and 11);

(6) to enable an order for the consolidation of proceedings to be made by the registrar (Rule 7);

(7) to alter the classes of cases in which notice of a payment into court must be given to the party entitled to the money (Rule 8), and

(8) to make it unnecessary to serve an indorsed copy of an order for the delivery of goods except on the application of the plaintiff (Rule 9(4)).