1970 No. 30 (L. 3)

COUNTY COURTS

PROCEDURE

The County Court (Amendment) Rules 1970

Made - - - - 9*th January* 1970
Coming into Operation 16*th February* 1970

1.—(1) These Rules may be cited as the County Court (Amendment) Rules 1970.

(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**).

(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 14, Rule 3(2), the words " that it relates only to his own title, he being the defendant in the proceedings, or " and the word " other " shall be omitted.

3. The following Rule shall be inserted in Order 20 after Rule 7 :—

Pleading convictio etc.

" 7A.—(1) Any party to an action who intends in reliance on section 11 or 12 of the Civil Evidence Act 1968(**d**) to adduce evidence of a conviction, finding of adultery or adjudication of paternity shall include in his particulars of claim or defence, as the case may be, a statement of his intention with particulars of—

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

(*b*) the court or court martial which made the conviction, finding or adjudication, and

(*c*) the issue in the action to which the conviction, finding or adjudication is relevant.

(2) Where a plaintiff's particulars of claim include such a statement as is mentioned in paragraph (1), then if the defendant—

(*a*) denies the conviction, finding or adjudication, or

(*b*) alleges that it was erroneous, or

(*c*) denies that it is relevant to any issue in the action,

he shall make the denial or allegation in his defence."

(**a**) S.R. & O. 1936/626 (1936 I, p. 282).
(**b**) The relevant amending instruments are S.I. 1950/1231, 1969/585 (1950 I, p. 400; 1969 I, p. 1551).
(**c**) 1889 c. 63.
(**d**) 1968 c. 64.

4. Order 20 shall be amended by inserting immediately before Rule 1 the words " Part I—GENERALLY " and by adding at the end of the following Part:—

" PART II

HEARSAY EVIDENCE

Interpretation and application.

20.—(1) In this Part of this Order " the Act " means the Civil Evidence Act 1968 and 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.

(2) This Part of this Order shall apply in relation to the trial or hearing of an issue arising in an action or matter and to a reference under section 92 or 93 of the County Courts Act 1959 as it applies to the trial or hearing of an action or matter.

Notice of intention to give certain statements.

21.—(1) Subject to the provisions of this rule, a party to an action or matter who desires to give in evidence at the trial or hearing any statement which is admissible in evidence by virtue of section 2, 4 or 5 of the Act shall, not less than 14 clear days before the day fixed for the trial or hearing, give notice of his desire to do so to the registrar and to every other party.

(2) Unless in any particular case the court otherwise directs, paragraph (1) shall not apply to an action or matter in which no defence or answer has been filed ; and where a defence or answer is filed less than 14 clear days before the day fixed for the trial or hearing, any party required to give notice pursuant to paragraph (1) shall apply to the court for an adjournment of the trial or hearing or for such other directions as may be appropriate.

(3) Paragraph (1) shall not apply in relation to any statement which is admissible as evidence of any fact stated therein by virtue not only of the said section 2, 4 or 5 but by virtue also of any other statutory provision within the meaning of section 1 of the Act.

(4) Paragraph (1) shall not apply in relation to any statement 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

(5) 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, without prejudice to paragraph (3) paragraph (1) shall not apply in relation to any statement which any party to the proceedings desires to have included in any affidavit to be used on his behalf in the proceedings.

Application of Rules of Supreme Court.

22. Order 38, Rules 22 to 25, of the Rules of the Supreme Court shall apply with the necessary modifications to a notice under the last foregoing rule as they apply to a notice under Rule 21 of the said Order 38.

Counter-notice requiring person to be called as a witness.

23.—(1) Subject to paragraphs (2) and (3), any party on whom a notice under Rule 21 is served may, within 7 clear days after service of the notice on him, give to the registrar and to the party who gave the notice a counter-notice requiring that party to call as a witness at the trial or hearing any person (naming him particulars of whom are contained in the notice.

(2) Where any notice under Rule 21 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 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 21 relates is one to which Rule 25 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 25 for directions with respect to the admissibility of that statement.

(4) If any party by whom a notice under Rule 21 is served fails to comply with a counter-notice duly served on him under this rule, then, unless any of the reasons specified in paragraph (5) applies in relation to the person named in the counter-notice, and without prejudice to the powers of the court under Rule 26, the statement to which the notice under Rule 21 relates shall not be admissible at the trial or hearing as evidence of any fact stated therein by virtue of section 2, 4 or 5 of the Act, as the case may be.

(5) The reasons referred to in paragraph (4) 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.

Determination of question whether person ca or should called as witness.

24.—(1) Where a question arises whether any of the reasons specified in Rule 23(5) applies in relation to a person particulars of whom are contained in a notice under Rule 21, the court may, on the application of any party to the action or matter, determine that question before the trial or hearing or give directions for it to be determined before the trial or hearing and for the manner in which it is to be determined.

(2) Unless the court otherwise directs, notice of any application under paragraph (1) must be served on every other party to the action 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 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.

Direction with resp to statem made in previous proceedin

25. Where a party has given notice in accordance with Rule 21 that he desires to give in evidence at the trial or hearing—

(*a*) a statement falling within section 2(1) of the Act which was made by a person, whether orally or in a document, in the course of giving evidence in some other legal proceedings (whether civil or criminal), or

(*b*) a statement falling within section 4(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 action or matter may apply to the court for 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.

26.—(1) Without prejudice to section 2(2)(*a*) and 4(2)(*a*) of the Act and Rule 25, the court may, if it thinks it just to do so, allow a statement falling within section 2(1), 4(1) or 5(1) of the Act to be given in evidence at the trial or hearing of an action or matter notwithstanding—

(*a*) that the statement is one in relation to which Rule 21(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 23.

(2) Without prejudice to the generality of paragraph (1), the court may exercise its power under that paragraph to allow a statement to be given in evidence at the trial or hearing 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 maker etc. of certain statements.

27. Where—

(*a*) a notice given under Rule 21 in an action or matter relates to a statement which is admissible by virtue of section 2 or 4 of the Act, and

(*b*) the person who made the statement, or, as the case may be, 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 action or matter, and

(*c*) none of the reasons mentioned in Rule 23(5) applies so as to prevent the party who gave the notice from calling that person as a witness,

no other party to the action 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 7 of the Act unless he gave a counter-notice under Rule 23 in respect of that person or applied under Rule 25 for a direction that that person be called as a witness at the trial or hearing of the action or matter.

Notice required of intention to give evidence of certain inconsistent statements.

28.—(1) Where a person, particulars of whom were contained in a notice given under Rule 21, is not to be called as a witness at the trial or hearing, any party who is entitled and intends to adduce in relation to that person any evidence which is admissible for the purpose mentioned in section 7(1)(*b*) of the Act must not more than 7 clear days after service of that notice on him

give notice of his intention to do so to the registrar and to the party who gave the notice under Rule 21.

(2) Order 38, Rule 22(1) and (2), of the Rules of the Supreme Court shall apply to a notice under this rule as if the notice were a notice under Rule 21 and the statement to which the notice relates were a statement admissible by virtue of section 2 of the Act.

(3) The court may, if it thinks it just to do so, allow a party to give in evidence at the trial or hearing of an action or matter any evidence which is admissible for the purpose mentioned in the said section 7(1)(*b*) notwithstanding that that party has failed to comply with the provisions of paragraph (1).

Costs.

29. If—

(*a*) a party to an action or matter serves a counter-notice under Rule 23 in respect of any person who is called as a witness at the trial of the action 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 47 and, in particular, to Rule 17 thereof, 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.

Exercise o jurisdictio

30. Order 48, Rule 4, shall have effect in relation to the jurisdiction of the court under sections 2(2)(*a*), 2(3), 4(2)(*a*) and 6(1) of the Act as it has effect in relation to any jurisdiction conferred by these Rules."

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 hand and submit them to the Lord Chancellor accordingly.

D. O. McKee.
Connolly H. Gage.
Hugh Mais.
H. S. Ruttle.
David Pennant.
W. Ralph Davies.
E. A. Everett.
Arthur Figgis.
Brian D. Bush.
A. F. Stapleton Cotton.
D. A. Marshall.

I allow these Rules, which shall come into operation on 16th February 1970.

Dated 9th January 1970.

Gardiner, C.

(**a**) 1959 c. 22.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules amend the County Court Rules for the purposes of the Civil Evidence Act 1968. Rule 2 deletes from Order 14, Rule 3(2), words enabling a defendant to resist a notice to produce a document on the ground that it relates only to his own title. Rule 3 inserts in Order 20 a new Rule 7A specifying the particulars to be included in a pleading where it is intended to put in evidence (by virtue of section 11 or 12 of the Act of 1968) a previous conviction, finding of adultery or adjudication of paternity. Rule 4 adds to Order 20 a new Part II prescribing the procedure to be followed where it is intended to adduce hearsay evidence under Part I of the Act. These provisions follow fairly closely the corresponding provisions made by the Rules of the Supreme Court (Amendment) 1969 (S.I., 1969/1105). Under the new Rule 21 of Order 20 a party intending to adduce hearsay evidence must give notice of his intention to do so not less than 14 clear days before the day fixed for the trial or hearing, but, unless the court otherwise directs, this requirement is not to apply unless a defence or answer has been filed; and where a defence or answer is filed too late to enable notice to be given, the party required to give notice must apply for an adjournment.

SI 1970/ 30
ISBN 0-11-000030-7

