STATUTORY INSTRUMENTS

1964 No. 1213 (L. 13)

SUPREME COURT OF JUDICATURE, ENGLAND

PROCEDURE

The Rules of the Supreme Court 1964

Made - - - -	*27th July* 1964
Laid before Parliament	*4th August* 1964
Coming into Operation	*1st October* 1964

We, the Rule Committee of the Supreme Court, being the authority having for the time being power under section 99(4) of the Supreme Court of Judicature (Consolidation) Act 1925(a) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature, hereby exercise those powers and all other powers enabling us in that behalf as follows:—

1. The Rules of the Supreme Court(b) shall be amended in accordance with the following provisions of this instrument.

2. The following rule shall be substituted for rules 1 and 2 of Order 2:—

Non-compliance with rules

" 1.—(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

(2) Subject to paragraph (3), the Court may, on the ground that there has been such failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these rules to be begun by an originating process other than the one employed."

3. Rule 3 of Order 2 shall be re-numbered 2 and in paragraph (1) thereof for the words " any proceedings for irregularity " there shall be substituted the words " for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein ".

(a) 15 & 16 Geo. 5. c. 49.
(b) S.I. 1962/2145 (1962 III, p. 2529) *and see* S.I. 1958/1246, 2094 (1958 II, pp. 2275, 2284).

4. In Order 4, rule 2, the following paragraphs shall be substituted for paragraph (2):—

"(2) Paragraph (1) shall not apply to an action which is entered in the commercial list under Order 72, rule 4(1), unless and until it is ordered to be removed from that list, and shall cease to apply to an action on its transfer to that list or on its being referred to an official referee.

(3) Where an action in the commercial list is ordered to be removed from that list, paragraph (1) shall apply to that action subject to the modification that for the reference to the first summons in the action there shall be substituted a reference to the first summons in the action after the making of the order for removal of the action from the commercial list."

5. The following amendments shall be made in Order 15:—

(*a*) In rule 7 the following paragraph shall be substituted for paragraph (4):—

"(4) The person on whose application an order is made under this rule 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."

(*b*) In rule 8(1) the words "or 7, then, subject to paragraph (2)" shall be omitted and for paragraphs (2), (3) and (4) the following paragraphs shall be substituted:—

"(2) Where by an order under rule 6 a person is to be made a defendant, the rules as to service of a writ of summons shall apply accordingly to service of the amended writ on him, but before serving the writ on him the person on whose application the order was made must procure the order to be noted in the cause book.

(3) Where by an order under rule 6 or 7 a person is to be made a defendant, the rules as to entry of appearance shall apply accordingly to entry of appearance by him subject, in the case of a person to be made a defendant by an order under rule 7, to the modification that the time limited for appearing shall begin with the date on which the order is served on him under rule 7(4) or, if the order is not required to be served on him, with the date on which the order is noted in the cause book.

(4) Where by an order under rule 6 or 7 a person is to be added as a party or is to be made a party in substitution for some other party, that person shall not become a party until—

(*a*) where the order is made under rule 6, the writ has been amended in relation to him under this rule and (if he is a defendant) has been served on him, or

(*b*) where the order is made under rule 7, the order has been served on him under rule 7(4) or, if the order is not required to be served on him, the order has been noted in the cause book;

and where by virtue of the foregoing provision a person becomes a party in substitution for some other party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the old except that entry of appearance by the old party shall not dispense with entry of appearance by the new".

6. At the end of rule 20 of Order 18 there shall be inserted the following paragraph :—

"The pleadings in an action are deemed to be closed at the time provided by the foregoing provision notwithstanding that any request or order for particulars has been made but has not been complied with at that time."

7. The following rules shall be substituted for rules 4 and 5 of Order 20 :—

"*Application for disallowance of amendment made without leave*

4.—(1) Within 14 days after the service on a party of a pleading amended under rule 3(1), that party may apply to the Court to disallow the amendment.

(2) Where the Court hearing an application under this rule is satisfied that if an application for leave to make the amendment in question had been made under rule 5 at the date when the amendment was made under rule 3(1) leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part to be struck out.

(3) Any order made on an application under this rule may be made on such terms as to costs or otherwise as the Court thinks just.

Amendment of writ or pleading with leave

5.—(1) Subject to Order 15, rules 6, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

(3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued.

(4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under paragraph (2) if the capacity in which, if the amendment is made, the party will sue is one in which at the date of issue of the writ or the making of the counterclaim, as the case may be, he might have sued.

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause

of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment."

8. At the beginning of the set of Orders headed "Special Provisions as to Particular Proceedings" there shall be inserted the following Order:—

"ORDER 72

COMMERCIAL ACTIONS

Application and interpretation

1.—(1) This Order applies to commercial actions, and the other provisions of these Rules apply to those actions subject to the provisions of this Order.

(2) In this Order "commercial action" includes any cause arising out of the ordinary transactions of merchants and traders and, without prejudice to the generality of the foregoing words, any cause relating to the construction of a mercantile document, the export or import of merchandise, affreightment, insurance, banking, mercantile agency and mercantile usage.

The Commercial List

2.—(1) There shall be a list, which shall be called "The commercial list", in which commercial actions may be entered in accordance with the provisions of this Order, and a judge of the Queen's Bench Division shall be in charge of that list.

(2) In this Order references to the judge shall be construed as references to the judge for the time being in charge of the commercial list.

(3) The judge shall have control of the actions in the commercial list and, subject to the provisions of this Order and to any directions of the judge, the powers of a judge in chambers (including those exercisable by a master or registrar) shall, in relation to an action in the commercial list, be exercisable by the judge.

(4) Paragraph (3) shall not be construed as preventing the powers of the judge being exercised by some other judge.

Powers, etc., of Liverpool and Manchester district registrars

3.—(1) All interlocutory applications in an action in the commercial list proceeding in the district registry of Liverpool or the district registry of Manchester, other than an application under rule 6, must be made to the registrar of that registry notwithstanding that the action is in the commercial list, and the registrar may make such order on any such application as he thinks fit or may adjourn the application to be heard by the judge:

Provided that if any party to any such application requests the registrar to adjourn the application to the judge for hearing by him the registrar shall adjourn it accordingly.

(2) It shall be the duty of the registrar of each of the said registries to keep the judge's clerk informed of the progress of actions in the commercial list proceeding in that registry and, in particular, to inform him of the making of an order that such an action shall be tried at Liverpool or Manchester, as the case may be, and of the date fixed for the trial.

Entry of action in commercial list when action begun

1964/1944 4.—(1) Before a writ or originating summons by which a commercial action is to be begun is issued out of the central office, the Admiralty registry, the district registry of Liverpool or the district registry of Manchester, it may be marked in the top left hand corner with the words "Commercial List", and on the issue of a writ or summons so marked the action begun thereby shall be entered in the commercial list.

1964/1944 (2) If the plaintiff intends to issue the writ or originating summons by which a commercial action is to be begun out of the central office or the Admiralty registry and to mark it in accordance with paragraph (1), and the writ, notice of the writ or the originating summons, as the case may be, is to be served out of the jurisdiction, an application for leave to issue the writ or summons and to serve the writ, or notice of the writ, or the summons out of the jurisdiction may be made to the judge.

(3) The affidavit in support of an application made to the judge by virtue of paragraph (2) must, in addition to the matters required by Order 11, rule 4(1) to be stated, state that the plaintiff intends to mark the writ or originating summons in accordance with paragraph (1) of this rule.

(4) If the judge hearing an application made to him by virtue of paragraph (2) is of opinion that the action in question should not be entered in the commercial list, he may adjourn the application to be heard by a master or the Admiralty registrar, as the circumstances of the case require.

Transfer of action to commercial list after action begun

1964/1944 5.—(1) At any stage of the proceedings in a commercial action before trial any party to the action may apply by summons to the judge or, if the action is proceeding in the district registry of Liverpool or the district registry of Manchester, to the registrar of that registry to transfer the action to the commercial list.

(2) Where an application under paragraph (1) is made to the registrar of either of the said registries, the registrar may either order the action to be transferred to the commercial list or adjourn the summons to be heard by the judge.

1964/1944 (3) If, on the hearing of any summons in a commercial action, it appears to the Court that the action may be one suitable for trial in the commercial list and any party wishes the action to be transferred to that list, then, subject to paragraph (4), the Court may adjourn the summons so that it can be heard by the judge and treated by him as a summons to transfer the action to that list.

1964/1944 (4) The registrar of the district registry of Liverpool or the district registry of Manchester may, instead of adjourning a summons under paragraph (3), order the action to be transferred to the commercial list; and if on the hearing of any summons in a commercial action by the registrar of any district registry any party requests the registrar to adjourn the summons under paragraph (3) so that it can be heard by the judge, the registrar shall adjourn the summons accordingly, and the adjourned summons shall be treated by the judge as a summons to transfer the action to the commercial list.

1964/1944 (5) Where the judge orders a commercial action proceeding in a district registry to be transferred to the commercial list he may also order the action to be transferred to the Royal Courts of Justice.

Removal of action from commercial list

6.—(1) The judge may, of his own motion or on the application of any party, order an action in the commercial list to be removed from that list.

(2) Where an action is in the commercial list by virtue of rule 4, an application by a defendant or third party for an order under this rule must be made within 7 days after entering an appearance in the action.

Pleadings in commercial list actions

7.—(1) The pleadings in an action in the commercial list must be in the form of points of claim, or of defence, counterclaim, defence to counterclaim or reply, as the case may be and must be as brief as possible.

(2) Without prejudice to Order 18, rule 12(1), no particulars shall be applied for or ordered in an action in the commercial list except such particulars as are necessary to enable the party applying to be informed of the case he has to meet or as are for some other reason necessary to secure the just, expeditious and economical disposal of any question at issue in the action.

(3) The foregoing provisions are without prejudice to the power of the judge or of the district registrar of Liverpool or the district registrar of Manchester to order that an action in the commercial list shall be tried without pleadings or further pleadings, as the case may be.

Directions in commercial list actions

8.—(1) Notwithstanding anything in Order 25, rule 1(1), any party to an action in the commercial list may take out a summons for directions in the action before the pleadings in the action are deemed to be closed.

(2) Where an application is made to transfer an action to the commercial list, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires the parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application were a summons for directions.

Trial with City of London special jury

9.—(1) If an action in, or ordered to be transferred to, the commercial list, is ordered to be tried at the Royal Courts of Justice with a jury, the Court may, at the same time or subsequently, order the action to be tried with a City of London special jury on such terms, if any, as to costs and otherwise as may be just.

(2) It shall be the duty of the Court to make an order under this rule if it is satisfied that it is a proper case for trial with a jury and an application for the order is made by any party to the action either at the time at which the mode of trial is fixed or, with the leave of the judge, at any later stage.

(3) In this rule "the Court" means the judge, the district registrar of Liverpool or the district registrar of Manchester, as the case may be.

Production of certain documents in marine insurance actions

10.—(1) Where in an action in the commercial list relating to a marine insurance policy an application for an order under Order 24, rule 3, is made by the insurer, then, without prejudice to its powers under that rule, the Court, if satisfied that the circumstances of the case are such that it is necessary or expedient to do so, may make an order, either in Form No. 19 in Appendix K or in such other form as it thinks fit, for the production of such documents as are therein specified or described.

(2) An order under this rule may be made on such terms, if any, as to staying proceedings in the action or otherwise, as the Court thinks fit.

(3) In this rule "the Court" means the judge, the district registrar of Liverpool or the district registrar of Manchester, as the case may be."

9. The following amendments shall be made in rule 4 of Order 75:—

(*a*) in the cross-heading, the words "in certain actions in personam" shall be omitted;

(*b*) in paragraph (1), for the words "paragraphs (2) and (3)" there shall be substituted the words "the following provisions of this rule", and in paragraph (1)(*a*) after the word "or", where first occurring, there shall be inserted the word "a";

(*c*) in paragraph (3) for the words "This rule" there shall be substituted the words "Paragraph (1)"; and

(*d*) at the end there shall be added the following paragraph:—

"(4) The proviso to rule 7(1) of Order 6 and Order 11, rule 1(2), shall not apply to a writ, or notice of a writ, by which any Admiralty action is begun."

10. The following amendments shall be made in Order 88:—

(*a*) In rule 5(1)(*b*) after the word "Act" there shall be inserted the words "or otherwise".

(*b*) The following rule shall be inserted after rule 5:—

Transfer of certain applications etc. to the commercial list

"5A.—(1) An application to transfer to the commercial list—

(*a*) a special case stated for the decision of the High Court by an arbitrator or umpire under section 21 of the Arbitration Act 1950, or

(*b*) any such application as is referred to in rule 5(1),

may be made to the judge in charge of the commercial list by summons, and if it appears to the judge that the subject matter of the reference or award to which such case or application relates is of a commercial nature he may make an order transferring the case or application to the commercial list.

(2) Order 72, rules 2(3) and (4) and 6(1), shall apply in relation to a special case or application transferred to the commercial list by order under this rule as they apply to actions in the commercial list."

11. The following rules shall be revoked:—

Order 24, rule 9;

Order 25, rule 1(2)(*f*), from "or" to the end;

Order 25, rules 2(7) and 8;

Order 36, rule 11.

12. The following amendments shall be made in the Supreme Court Costs Rules 1959(**a**):—

(*a*) In rule 3(3) for the words from "statement" to "defendant" there shall be substituted the words "any pleading".

(**a**) S.I. 1959/1958 (Schedule 2) (1959 II, p. 2535).

(*b*) In rule 8(7) after the word " fund " there shall be inserted the words " other than the legal aid fund ".

(*c*) In rule 13(1)(*a*) for the amount " £300 " there shall be substituted the amount " £350 ".

(*d*) In rule 22(1) and (2) the words " and are to be conducted by a taxing officer other than the Admiralty registrar " shall be omitted.

(*e*) In rule 23 paragraph (4) shall be omitted.

(*f*) In rule 34, after paragraph (2) there shall be inserted the following paragraph:—

" (2A) On a hearing of a review under the last foregoing rule a party to whom a copy of objections was delivered under paragraph (4) of that rule shall be entitled to be heard in respect of any item to which the objections relate notwithstanding that he did not deliver written answers to the objections under that paragraph."

(*g*) In rule 34 at the end of paragraph (3) there shall be added the following paragraph:—

" A request under this paragraph must be made within 14 days after the review or such shorter period as may be fixed by the taxing officer."

(*h*) At the end of rule 35(1) there shall be added the words " if, but only if, one of the parties to the proceedings before the taxing officer requested that officer in accordance with rule 34(3) of these rules to state the reasons for his decision in respect of that item or part on the review ".

(*j*) The following amendments shall be made in Appendix 2:—

(i) In item 16 for the words " and fair copy " there shall be substituted the words " including copy for counsel ".

(ii) At the end of item 22 there shall be added in column 1 the words " including, when appropriate, attending deponent to be sworn and copy for service " and for the amount of £2 and £10 in column 2 of that item there shall be substituted an amount of £3 and £12 10*s*. 0*d*. respectively.

(iii) At the end of item 24 the following shall be added:—

" Where the writ mentioned in paragraph (*a*) is for more than one witness, copy for service on each additional witness ... ... 2*s*. 0*d*."

(iv) At the end of item 28 there shall be added in column 1 the words " including copy for counsel " and for the amount of £5 in column 2 of that item there shall be substituted an amount of £7 10*s*.

(v) For items 33 and 34 there shall be substituted the following item:—

" 33. Attending at court for purpose of—

(*a*) any application relating to or consequent on trial or hearing of a cause or matter	1	10	0
	to		
	5	0	0

(*b*) trial or hearing of a cause or matter for each day—			
(i) on which cause or matter is included in list of causes or matters to be tried or heard but on which trial or hearing is not begun	1	10	0
		to	
	8	0	0
(ii) of trial or hearing	3	0	0
		to	
	15	0	0
(*c*) hearing deferred judgment	3	0	0
		to	
	8	0	0

Note to item 33

Where the Court is not sitting at the Royal Courts of Justice, then, unless it is sitting in the town in which the solicitor practises, the solicitor shall also be allowed travelling and out of pocket expenses reasonably incurred by him, and where the Court is sitting at the Royal Courts of Justice and the costs of the attendance at court of a country solicitor are allowed, that solicitor shall also be allowed such expenses so incurred."

(vi) In item 38 for the words "Attending to obtain" there shall be substituted the word "Obtaining" and after the word "Division)" there shall be inserted the word "attending".

(vii) At the end of item 39 the following shall be added:—

"Or if bill of costs does not exceed £20 and is taxed at the same time as some other bill in the same proceedings	2	0	0"

(viii) At the end of item 74 there shall be added in column 1 the words "including copy for counsel" and for the amount of £2 and £7 10*s*. 0*d*. in column 2 of that item there shall be substituted an amount of £1 and £10 respectively.

(ix) In items 41, 85 and 86, for the amount of 8*d*. there shall, as respects copies made after the date of the coming into operation of this instrument, be substituted an amount of 10*d*.

(x) In item 84, for the amount of 4*d*. there shall, as respects copies made after the said date, be substituted an amount of 5*d*."

13. This instrument may be cited as the Rules of the Supreme Court 1964 and shall come into operation on 1st October 1964.

Dated 27th July 1964.

Dilhorne, C.
Parker of Waddington, C.J.
Denning, M.R.
J. E. S. Simon, P.
Colin H. Pearson, L.J.
Edmund Davies, J.
Geoffrey Cross, J.
Eustace Roskill, J.
Arthur Bagnall.
Hugh Griffiths.

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 so as (1) to ensure that any failure to comply with the Rules is to be treated as an irregularity, which the court may deal with as it thinks fit (rules 2 and 3); (2) to amend the provisions consequential on the making of an order to carry on proceedings (rule 5); (3) to ensure that pleadings are deemed to be closed at the appropriate time even where a request or order for particulars has still to be complied with (rule 6); (4) to extend the court's power to allow amendments notwithstanding the expiry of any relevant period of limitation (rule 7); (5) to replace the directions of the judges with regard to the Commercial Court by a new Order 72 which will enable an action begun in London or the district registry of Liverpool or Manchester to be entered in the commercial list at the time the writ or originating summons is issued (rule 8), and to make consequential amendments and revocations of other rules (rules 10 and 11); and (6) to clarify the provisions relating to the service of a writ out of the jurisdiction in Admiralty proceedings (rule 9). The Rules also make a number of minor amendments in the Supreme Court Costs Rules 1959 (rule 12).