1970 No. 944 (L.20)

SUPREME COURT OF JUDICATURE, ENGLAND

PROCEDURE

The Rules of the Supreme Court (Amendment No. 2) 1970

Made - - -	*16th June* 1970
Laid before Parliament	*1st July* 1970
Coming into Operation	*20th July* 1970

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.—(1) These Rules may be cited as the Rules of the Supreme Court (Amendment No. 2) 1970 and shall come into operation on 20th July 1970.

(2) In these Rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court 1965(**b**), as amended (**c**).

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

2. The Arrangement of Orders at the beginning of the Rules of the Supreme Court 1965 shall be amended as follows :—

(1) In the title of Order 29 after the word "property" there shall be inserted the words "interim payments".

(2) After Order 112 there shall be inserted the following entry :—

"113. Summary proceedings for possession of land".

3. The following paragraph shall be substituted for paragraph (6) of Order 4, rule 1 :—

"(6) Where any cause or matter begun in the Chancery Division is so connected with a cause or matter already assigned to a group of judges in accordance with this rule that the later cause or matter ought to be assigned to the same group, it shall, if practicable, be assigned to that group.

A note indorsed on the document by which the later cause or matter is begun stating that it is to be assigned to a group in accordance with this paragraph shall, if made by a master of that group or by the district registrar of the registry in which the earlier cause or matter was begun, be sufficient authority for the later cause or matter to be so assigned."

(**a**) 1925 c. 49. (**b**) S.I. 1965/1776 (1965 III, p. 4995).
(**c**) The relevant amending instrument is S.I. 1968/1244 (1968 II, p. 3360).
(**d**) 1889 c. 63.

4. In Order 16, rule 10, for the words "before the trial of an action, a party to the action" there shall be substituted the words "at any time after he has entered an appearance, a party to an action".

5. Order 29 shall be amended as follows :—

(1) In the title after the word "PROPERTY" there shall be inserted the words "INTERIM PAYMENTS".

(2) Immediately before rule 1 there shall be inserted the words "I. INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, ETC.".

(3) At the end there shall be added the following Part :—

"II. INTERIM PAYMENTS

Interpretation of Part II

9. In this Part of this Order—

"an action for personal injuries" means an action in which there is a claim for damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death ;

"personal injuries" includes any disease and any impairment of a person's physical or mental condition ;

"interim payment", in relation to a defendant, means a payment on account of any such damages as aforesaid which that defendant may be held liable to pay to or for the benefit of the plaintiff ;

any reference to the plaintiff or defendant includes a reference to any person who, for the purpose of the proceedings, acts as next friend to the plaintiff or guardian of the defendant.

Application for interim payment

10. In an action for personal injuries the plaintiff may, at any time after the writ has been served on a defendant and the time limited for him to appear has expired, apply to the Court for an order requiring that defendant to make an interim payment.

Manner in which application under rule 10 *must be made*

11.—(1) An application under rule 10 must be made by summons, stating the grounds on which the application is made, and be supported by an affidavit, which must—

(*a*) verify the special damages, if any, claimed by the plaintiff up to the date of the application ;

(*b*) exhibit the hospital and medical reports, if any, relied upon by the plaintiff in support of the application ; and

(*c*) if the plaintiff's claim is made under the Fatal Accidents Acts 1846 to 1959, contain the particulars mentioned in section 4 of the Fatal Accidents Act 1846(**a**).

(2) The summons and a copy of the affidavit in support and any exhibit referred to therein must be served on the defendant against whom the order is sought not less than 10 clear days before the return day.

(**a**) 1846 c. 93.

(3) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown by reason of a change of circumstances.

Order for interim payment

12.—(1) If, on the hearing of an application under rule 10, the Court is satisfied—

(*a*) that the defendant against whom the order is sought (in this paragraph referred to as "the respondent") has admitted liability for the plaintiff's claim ; or

(*b*) that the plaintiff has obtained judgment against the respondent for damages to be assessed ; or

(*c*) that, if the action proceeded to trial, the plaintiff would succeed in the action on the question of liability without any substantial reduction of the damages for fault on his part or on the part of any person in respect of whose injury or death the plaintiff's claim arises and would obtain judgment for damages against the respondent or, where there are two or more defendants, against any of them,

the Court may, if it thinks fit and subject to paragraph (2), order the respondent to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff.

(2) No order shall be made under paragraph (1) if it appears to the Court that the defendant, or, if there are two or more defendants, any of them, is not a person falling within one of the following categories, namely—

(*a*) a person who is insured in respect of the plaintiff's claim ;

(*b*) a public authority ;

(*c*) a person whose means and resources are such as to enable him to make the interim payment.

(3) Subject to Order 80, rule 12, the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into court, and where the amount is paid into court, the Court may, on the ex parte application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.

(4) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.

Directions on application under rule 10

13.—(1) Where an application is made under rule 10, the Court may give directions as to the further conduct of the action.

(2) If, in a case to which sub-paragraph (*c*) of rule 12(1) applies, the Court thinks fit to give directions under this rule before the summons for directions, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires 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, and in particular the Court may order an early trial of the action.

Non-disclosure of order for interim payment

14. The fact that an order has been made under rule 12 shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing of the action or of any question or issue as to liability or damages until all questions of liability and the amount of the damages have been decided.

Payment into court

15. Where, after making an interim payment pursuant to an order under rule 12, a defendant pays a sum of money into court under Order 22, rule 1, the notice of payment must state that the defendant has taken into account the interim payment.

Adjustment on final judgment or order

16. Where a defendant has made an interim payment pursuant to an order under rule 12, the Court may, on giving or making a final judgment or order determining that defendant's liability to the plaintiff in the action, make any such order with respect to the interim payment as may be necessary for giving effect to the determination and in particular—

(*a*) an order for the repayment by the plaintiff of any sum by which the interim payment exceeds the amount which that defendant is liable to pay the plaintiff, or

(*b*) an order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

Interim order on counterclaim

17. A defendant who makes a counterclaim for damages in respect of personal injuries to himself or any other person or in respect of a person's death may apply for an order requiring the plaintiff to make an interim payment and this Part of this Order shall apply accordingly with the necessary modifications."

6. In Order 45, rule 12(3), for the words "in Appendix A" there shall be substituted the words "or 66A in Appendix A, whichever is appropriate".

7. Order 59 shall be amended as follows:—

(1) The following paragraph shall be added at the end of rule 4:—

"(3) In the case of an appeal from a decision in respect of which a certificate has been granted under section 12 of the Administration of Justice Act 1969(**a**) the period referred to in paragraph (1) shall be calculated from the end of the time during which, in accordance with section 13(5) of that Act, no appeal lies to the Court of Appeal".

(2) In rule 14(2) the words "if the appellant is acting in person" shall be omitted.

(3) In rule 18(2) for the words "14 days" there shall be substituted the words "6 weeks".

(**a**) 1969 c. 58.

8. Order 75, rule 24, shall be amended as follows :—

(1) In paragraph (2) for the words "paragraph (3)" there shall be substituted the words "paragraphs (3) and (4)".

(2) At the end there shall be added the following paragraph :—

"(4) Where in an Admiralty action money has been paid into court pursuant to an order made under Order 29, rule 12, the registrar or in the case of an action which is proceeding in a district registry, the registrar of that registry, may make an order under paragraph (3) of that rule for the money to be paid out to the person entitled thereto"

9. The following Order shall be inserted after Order 112 :—

"ORDER 113

SUMMARY PROCEEDINGS FOR POSSESSION OF LAND

Proceedings to be brought by originating summons

1. Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

Forms of originating summons

2.—(1) Subject to paragraph (2), the originating summons shall be in Form No. 10 in Appendix A.

(2) Where the person claiming possession is unable, after taking reasonable steps, to identify every person occupying the land for the purpose of making him a defendant, the originating summons shall be in Form No. 11A in Appendix A.

(3) No appearance need be entered to the originating summons.

Affidavit in support

3. The plaintiff shall file in support of the originating summons an affidavit stating—

(*a*) his interest in the land ;

(*b*) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises ; and

(*c*) where the summons is in Form No. 11A, that he has taken all reasonable steps (describing them) to identify the persons occupying the land who are not named in the summons.

Service of originating summons

4.—(1) Where the plaintiff has identified any person in occupation of the land the originating summons together with a copy of the affidavit in support shall be served on him—

(*a*) in accordance with Order 10, rule 5, or

(*b*) by leaving a copy of the summons and of the affidavit, or sending them to him, at the premises, or

(*c*) in such other manner as the Court may direct.

(2) Where the plaintiff has not identified every person in occupation of the land, the originating summons shall, in addition to being served on the identified defendants (if any) in accordance with paragraph (1), be served by affixing a copy of it to the main door or other conspicuous part of the premises, unless the Court directs service in some other manner.

(3) Order 28, rule 3, shall not apply to proceedings under this Order.

Application by occupier to be made a party

5. Without prejudice to Order 15, rules 6 and 10, any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant.

Order for possession

6.—(1) A final order shall not be made on the originating summons except by a judge in person and shall, except in case of urgency and by leave of the Court, not be made less than 7 clear days after the date of service.

(2) An order for possession in proceedings under this Order shall be in Form No. 42A.

Writ of possession

7.—(1) Notwithstanding the provisions of Order 45, rule 3, a writ of possession to enforce an order for possession under this Order may be issued without the leave of the Court.

(2) The writ of possession shall be in Form No. 66A.

Setting aside order

8. The judge may, on such terms as he thinks just, set aside or vary any order made in proceedings under this Order."

10. Appendix A to the Rules of the Supreme Court 1965 shall be amended as follows :—

(1) The following form shall be inserted after Form No. 11 :—

"No. 11A

Originating summons for possession under Order 113

(O.113, r. 2)

In the High Court of Justice 19 , No.
Division
[Group]
In the matter of
[A.B. Plaintiff
C.D. Defendant (if any) whose name is known to the plaintiff]

Let all persons concerned attend before Royal Courts of Justice, Strand, London, WC2A 2LL, on day, the day of 19 , at o'clock, on the hearing of an application by A.B. for an order that he do recover possession of on the ground that he is entitled to possession and

that the person(s) in occupation is(are) in occupation without licence or consent.

Dated the day of 19 .

This summons was taken out by of solicitor for the said plaintiff whose address is [*or* This summons was taken out by of agent for of solicitor for the said plaintiff whose address is] [*or when the plaintiff acts in person*

This summons was taken out by the said plaintiff who resides at and is (*state occupation*) *and* (*if the plaintiff does not reside within the jurisdiction*) whose address for service is]

Note. Any person occupying the premises who is not named as a defendant by this summons may apply to the Court personally or by counsel or solicitor to be joined as a defendant. If a person occupying the premises does not attend personally or by counsel or solicitor at the time and place above-mentioned, such order will be made as the Court may think just and expedient."

(2) The following form shall be inserted after Form No. 42 :—

"No. 42A

Order for possession under Order 113

(O.113, r. 6)

[*Heading as in summons*]

Upon hearing and upon reading the affidavit of filed the day of 19 , it is ordered that the plaintiff A.B. do recover possession of the land described in the originating summons as [and that the defendant do pay the plaintiff £ costs [*or* costs to be taxed]]

The above costs, etc. [as in No. 39]].

Dated the day of 19 ."

(3) The following form shall be inserted after Form No. 66 :—

"No. 66A

Writ of possession under Order 113

(O.113, r. 7)

[*Heading as in summons*]

ELIZABETH THE SECOND [as in No. 53]

To the Sheriff of greeting:

Whereas it was on the day of 19 ordered that the plaintiff A.B. do recover possession of [*describe the land recovery of which has been ordered*] in your county [and that the defendant C.D. do pay him £ costs [*or* costs to be taxed, which costs have been taxed and allowed at £ as appears by the taxing officer's certificate dated the day of 19]]:

We command you that you enter the said land and cause A.B. to have possession of it

[And we also command you that of the goods, chattels and other property [*remainder as in No.* 53]]."

Dated 16th June 1970.

Gardiner, C.
Parker of Waddington, C.J.
Denning, M.R.
J. E. S. Simon, P.
Denys B. Buckley, L.J.
Nigel Bridge, J.
E. S. Fay.
Oliver Lodge.
Arthur J. Driver.

EXPLANATORY NOTE

(*This Note is not part of the Rules.*)

These Rules introduce a rapid new procedure for the recovery of possession of land against trespassers (Rules 6, 9 and 10) and enable an order to be made for an interim payment on account of the damages which may be recovered in an action for personal injuries (Rules 5 and 8). They also make minor amendments in the Rules of the Supreme Court relating to the assignment of cases in the Chancery Division (Rule 3), offers of contribution by third parties and joint tortfeasors (Rule 4) and appeals to the Court of Appeal (Rule 7).

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