1962 No. 838 (L. 11)

SUPREME COURT OF JUDICATURE, ENGLAND

PROCEDURE

The Rules of the Supreme Court (No. 1), 1962

Made - - - -	18*th April*, 1962
Laid before Parliament	25*th April*, 1962
Coming into Operation	14*th May*, 1962

We, the Rule Committee of the Supreme Court, being the authority having for the time being power under subsection (4) of section ninety-nine 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 as follows:—

PART I

ACTIONS UNDER HIRE-PURCHASE AGREEMENTS

1.—(1) At the end of Order III (which relates to the indorsement of the plaintiff's claim on a writ of summons) there shall be inserted the following Rule:—

"11.—(1) Where in an action arising out of a hire-purchase agreement brought against the hirer of the goods to which the agreement relates, or a guarantor, the writ is indorsed with a claim for money, not being—

(*a*) a claim for unliquidated damages, or

(*b*) a claim for no more than the amount of any instalment or instalments of the hire-purchase price which is or are due and unpaid,

then, if the writ is specially indorsed under Rule 6 of this Order, the indorsement shall state the circumstances in which the claim arises.

(2) In this Rule 'hire-purchase agreement' means an agreement to which the Hire-Purchase Act, 1938(b), applies, or would apply if the limitation as to the hire-purchase price contained in section 1 thereof were omitted; and 'goods', 'guarantor', 'hire-purchase price' and 'hirer' have the meanings respectively assigned to them by section 21 of that Act:

Provided that 'hire-purchase agreement' includes an agreement for the sale of goods under which the price is payable by instalments and the property in the goods remains in the seller, notwithstanding that the buyer is in possession of the goods, until such conditions as to the payment of instalments and otherwise as may be specified in the agreement are fulfilled, and the other expressions above referred to shall be construed accordingly."

2. The following amendments shall be made in Order XIII (which deals with default of appearance):—

(1) In Rule 3 after the word "Order", where first occurring, there shall be inserted the words "or Rule 19 thereof".

(2) In Rule 4 after the word "may", where first occurring, there shall be inserted the words "subject to Rule 19 of this Order".

(a) 15 & 16 Geo. 5. c. 49. (b) 1 & 2 Geo. 6. c. 53.

(3) At the end of the Order there shall be inserted the following Rule:—

"19.—(1) In an action arising out of a hire-purchase agreement brought against the hirer of the goods to which the agreement relates, or a guarantor, in which the writ is indorsed with a claim for money, not being—

(*a*) a claim for unliquidated damages, or

(*b*) a claim for no more than the amount of any instalment or instalments of the hire-purchase price which is or are due and unpaid,

judgment shall not be entered in default of appearance except with the leave of the court or a judge.

(2) An application for the grant of leave under this Rule shall be made by notice which—

(*a*) shall not be issued until after the expiration of the time limited for appearing and after the filing of an affidavit of service of the writ;

(*b*) shall be made returnable not less than two clear days after the service thereof; and

(*c*) shall be in Form No. 2A in Appendix K with such variations as the circumstances may require.

(3) The notice shall be served on the defendant against whom the application is made either personally or by sending it by post to his last known address.

(4) The plaintiff shall produce to the court or judge hearing an application under this Rule the hire-purchase agreement to which the action relates.

(5) If it appears to the court or judge hearing an application under this Rule—

(*a*) that the amount claimed by the plaintiff may be a penalty, the application shall be dismissed;

(*b*) that part of that amount may be a penalty, the application shall be dismissed with respect to that part but the court or judge may give the plaintiff leave to enter judgment with respect to the remainder.

(6) The powers of the court or judge hearing an application under this Rule may be exercised whether the defendant against whom the application is made appears at the hearing or not.

(7) Expressions used in this Rule to which meanings are assigned by Order III, Rule 11, shall have the same meanings in this Rule as in that Rule."

3. At the end of Order XX (which deals with statements of claim) there shall be inserted the following Rule:—

"11.—(1) Where in an action arising out of a hire-purchase agreement brought against the hirer of the goods to which the agreement relates, or a guarantor, the writ is indorsed with a claim for money, not being—

(*a*) a claim for unliquidated damages, or

(*b*) a claim for no more than the amount of any instalment or instalments of the hire-purchase price which is or are due and unpaid,

the statement of claim shall state the circumstances in which the claim arises.

(2) Expressions used in this Rule to which meanings are assigned by Order III, Rule 11, shall have the same meanings in this Rule as in that Rule."

4. The following amendments shall be made in Order XXVII (which deals with default of pleading):—

(1) In Rule 2 after the word "Order", where first occurring, and in Rule 3 after the word "Order", there shall be inserted the words "or Rule 19 thereof".

(2) At the end of the Order there shall be inserted the following Rule:—

"19.—(1) In an action arising out of a hire-purchase agreement brought against the hirer of the goods to which the agreement relates, or a guarantor, in which the writ is indorsed with a claim for money, not being—

(*a*) a claim for unliquidated damages, or

(*b*) a claim for no more than the amount of any instalment or instalments of the hire-purchase price which is or are due and unpaid,

judgment shall not be entered in default of defence except with the leave of the court or a judge.

Expressions used in this paragraph to which meanings are assigned by Order III, Rule 11, shall have the same meanings in this paragraph as in that Rule.

(2) Paragraph 2 (*b*) and (*c*) and paragraphs (4) to (6) of Rule 19 of Order XIII shall apply in relation to an application for the grant of leave under this Rule as they apply in relation to an application for the grant of leave under that Rule, and the notice by which an application under this Rule is made shall be served on the defendant."

5. The Supreme Court Costs Rules, 1959(a), shall be amended as follows:—

(1) In paragraph 1 (*b*) of Part I of Appendix 3, for the words from "rule 9A" to "rule 16", where last occurring, there shall be substituted the words "or rule 9A or under the said rule 3 or the said rule 4 by virtue of Order 13, rule 16 or 19, or judgment in default of defence under Order 27, rule 2, rule 3 or rule 9, or under the said rule 2 or the said rule 3 by virtue of Order 27, rule 16 or 19".

(2) In paragraph (8) of Part II of Appendix 3 after the words "in default of appearance" there shall be inserted the words "or defence" and for the words "Order 13, rule 16 (which applies" there shall be substituted the words "Order 13, rule 16, or Order 27, rule 16 (which apply".

(3) In the said Part II after paragraph (8) there shall be inserted the following paragraph:—

"(8A) In the case of judgment in default of appearance or defence on an application by notice under Order 13, rule 19, or Order 27, rule 19 (which apply to certain actions arising out of hire-purchase agreements)	1 13 0	2 5 0
and, where there is more than one defendant, in respect of each additional defendant ...	3 0	5 0"

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

PART II

MISCELLANEOUS

6. In paragraph (7) (*c*) (iii) of Rule 3 of Order XVIB (which deals with persons under disability) the words "and that he is a proper person to be such next friend or guardian" shall be omitted.

7. The following paragraph shall be added to Rule 1 of Order XXXVI (which relates to trial):—

"(6) In this Order any reference to assizes includes a reference to adjourned assizes held after an interval of not less than fourteen days, and in relation to such assizes any reference to the commission day shall be construed as a reference to the day fixed for the commencement of the adjourned assizes."

8. In paragraph (5) (*a*) of Rule 12 of the Supreme Court Costs Rules, 1959, the words "in the Queen's Bench Division or Chancery Division" shall be omitted.

9. These Rules may be cited as the Rules of the Supreme Court (No. 1), 1962, and shall come into operation on the 14th day of May, 1962.

Dated the 18th day of April, 1962.

Kilmuir, C.
Parker of Waddington, C.J.
Evershed, M.R.
J. E. S. Simon, P.
B. Ormerod, L.J.
Colin H. Pearson, L.J.
Charles Russell, J.
John Megaw, J.
Reginald W. Goff.
Douglas Lowe.
Charles Norton.
W. O. Carter.

EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

Part I of these Rules makes special provision for the entry of judgment in default of appearance or defence in an action under a hire-purchase agreement for a sum of money not being unliquidated damages or arrears of the instalments due under the agreement. It will not be possible in such cases for judgment to be entered without leave.

Part II makes miscellaneous amendments in the Rules of the Supreme Court, including provision for the setting down of actions for trial at adjourned assizes to take account of the new arrangements for assizes made by the Assizes (Circuits) Order, 1962 (S.I. 1962/640).