STATUTORY INSTRUMENTS

1963 No. 682 (L. 6)

SUPREME COURT OF JUDICATURE, ENGLAND

PROCEDURE

The Rules of the Supreme Court (No. 1) 1963

Made - - - -	*28th March* 1963
Laid before Parliament	*4th April* 1963
Coming into Operation	*1st January* 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 (Revision) 1962(b) shall be amended in accordance with the following provisions of this instrument.

2. The following entries shall be inserted in Schedule 2:—

"LIV S	114A
LV K	126
LV L	127".

3. In the Arrangement of Orders set out at the beginning of Schedule 3 there shall be inserted, after the entry numbered 58A, the following entry—

"58B. Appeals to Court of Appeal from Restrictive Practices Court."

and, after the entry numbered 89, the following entry—

"*90. Actions in tort between husband and wife."

and, after the entry numbered 114, the following entry—

"114A. Appeals from the Disciplinary Committee under the Solicitors Act 1957."

and, at the end thereof, the following entries—

"126. Appeals under the Finance Act 1894.
127. Appeals under the Finance Act 1960."

4. In Schedule 3, Order 1, rule 3 (2) shall be amended by substituting for the figure "89" the figure "90".

5. In Schedule 3, Order 11, rules 5 and 6 shall be amended as follows:—

(1) in rule 5 (4) the words "a writ, or" and in rule 5 (5) the words "writ, or" shall be omitted;

(2) in the cross-heading of rule 6 the words "writ or" shall be omitted;

(3) in rule 6 (2) and (3), after the word "rules" there shall be inserted the words "notice of" and for the word "writ", where last occurring in each paragraph, there shall be substituted the word "notice";

(a) 15 & 16 Geo. 5. c. 49. (b) S.I. 1962/2145 (1962 III, p. 2529).

(4) in rule 6 (4), after the word "serve" and after the words "service of" there shall be inserted the words "notice of" and for the word "writ", where secondly and last occurring, there shall be substituted the word "notice";

(5) in rule 6 (5), for the word "writ", wherever occurring, there shall be substituted the word "notice";

(6) in rule 6 (7), after the word "for" there shall be inserted the words "notice of";

(7) rule 6 (8) shall be omitted.

6. In Schedule 3, Order 15, rule 15 (1) shall be amended as follows:—

(*a*) after the word "Where" there shall be inserted the words "in any proceedings";

(*b*) for the words "any proceedings" there shall be substituted the words "the matter in question in the proceedings";

(*c*) for the words "order the proceedings to be carried on notwithstanding" there shall be substituted the words "proceed in".

7. In Schedule 3, Order 75, rule 20 shall be amended by adding at the end of paragraph (3) the following paragraph:—

"Where the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1 (2), or was served on a registrar under rule 8 of this Order, an affidavit proving due service of the writ need not be filed under this paragraph, but the writ indorsed as mentioned in the said rule 1 (2) or indorsed by the registrar with a statement that he accepts service of the writ must be lodged with the affidavit verifying the facts on which the action is based."

8. In Schedule 3, Order 76, rule 8 (8), and Order 88, rule 6 (3), shall be amended by inserting after the word "to", where last occurring, the words "notice of".

9. At the end of Schedule 3 there shall be added the following Order:—

"ORDER 90

ACTIONS IN TORT BETWEEN HUSBAND AND WIFE

Application

1.—(1) These rules apply to actions to which this Order applies subject to the following rules of this Order.

(2) This Order applies to any action in tort brought by one of the parties to a marriage against the other during the subsistence of the marriage.

Court to consider whether action should be stayed

2. On the first application by summons or motion in an action to which this Order applies, the Court shall consider, if necessary of its own motion, whether the power to stay the action under section 1 (2) of the Law Reform (Husband and Wife) Act 1962(a) should or should not be exercised.

Judgment in default of appearance or of defence

3.—(1) In an action to which this Order applies judgment in default of appearance or of defence shall not be entered except with the leave of the Court.

(a) 10 & 11 Eliz. 2. c. 48.

(2) An application for the grant of leave under this rule must be made by summons and the summons must, notwithstanding Order 67, rule 8, be served on the defendant.

(3) If the application is for leave to enter judgment in default of appearance, the summons shall not be issued until after the time limited for appearing."

10. In Schedule 4, after paragraph 18, there shall be inserted the following paragraph:—

"18A. In Order 116, rules 11, 12 and 13, in Order 117, rules 53, 54 and 58, in Order 118, rule 70, in Order 119, rule 75, the words 'this Part of', and in Order 120, rule 79, the words from 'or after' to 'later', shall be omitted.

References in this paragraph to Orders 116, 117, 118, 119 and 120 are references to those Orders as re-numbered in accordance with paragraph 2 of this instrument."

11. In Schedule 4, paragraph 24, the following entries shall be added to the Table therein set out:—

"Order 126, rule 10...rule 1A (2) of Order LXVII...Order 77, rule 4 (2)

Order 127, rule 9...rule 1A (2) of Order LXVII...Order 77, rule 4 (2)",

and for the words "and 113" there shall be substituted the words "113, 126 and 127".

12. In Form No. 14 in Part I of Appendix A to the Rules of the Supreme Court 1883(a), as amended by the Rules of the Supreme Court (Forms) 1962(b), after the words "request that" there shall be inserted the words "notice of".

13. This instrument may be cited as the Rules of the Supreme Court (No. 1) 1963 and shall come into operation on 1st January 1964.

Dated 28th March 1963.

Dilhorne, C.
Parker of Waddington, C.J.
Denning, M.R.
J. E. S. Simon, P.
B. Ormerod, L.J.
Colin H. Pearson, L.J.
Geoffrey Cross, J.
John Megaw, J.
Arthur Bagnall.
Douglas Lowe.
Charles Norton.
W. O. Carter.

(a) Rev. 1903, XII, p. 54. (b) S.I. 1962/2146 (1962 III, p. 2701).

EXPLANATORY NOTE

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

These Rules make a number of minor drafting alterations in the Rules of the Supreme Court (Revision) 1962 and insert in them a new Order 90 to replace the provisions made by the Rules of the Supreme Court (No. 2) 1962 for the exercise by the High Court of its power under section 1 (2) of the Law Reform (Husband and Wife) Act 1962 to stay proceedings in tort between husband and wife. The changes will take effect on 1st January 1964, when the Rules of the Supreme Court (Revision) 1962 come into operation.