STATUTORY INSTRUMENTS

1963 No. 1989 (L. 16)

SUPREME COURT OF JUDICATURE, ENGLAND

PROCEDURE

The Rules of the Supreme Court (No. 2) 1963

Made - - - -	*6th December* 1963
Laid before Parliament	*12th December* 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 :—

PART 1

AMENDMENTS OF R.S.C. (REVISION) 1962

1. The Rules of the Supreme Court (Revision) 1962(b), as amended(c), shall be amended in accordance with the following provisions of this Part of this instrument.

2. At the end of the Arrangement of Orders set out at the beginning of Schedule 3 there shall be added the following entry :—

"128. The Limitation Act 1963."

3. In Schedule 3, Order 6, rule 7, shall be amended by adding at the end of paragraph (1) the following words :—

"Provided that if every claim made by a writ is one which by virtue of an enactment the High Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction, the foregoing provision shall not apply to the writ."

4. In Schedule 3, Order 7, rule 7(1), shall be omitted and paragraphs (2) and (3) of that rule shall be re-numbered (1) and (2) respectively.

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

(*a*) In rule 1(2) for the words "(2) In this rule" there shall be substituted the words "In this paragraph".

(*b*) At the end of rule 1 there shall be added the following paragraphs :—

"(2) Service of a writ in Scotland, Northern Ireland, the Isle of Man or the Channel Islands, and service of notice of a writ in any other place out of the jurisdiction, is permissible without the leave of the Court if every claim made in the action begun by the writ is one which by virtue of an enactment the High Court has power to hear and determine notwithstanding that the person against whom the claim

(a) 15 & 16 Geo. 5. c. 49. (b) S.I. 1962/2145 (1962 III, p. 2529).
(c) S.I. 1963/682 (1963 I, p. 843).

is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction.

(3) Where a writ or notice of a writ is to be served out of the jurisdiction under paragraph (2), the time to be inserted in the writ or notice within which the defendant served therewith must enter an appearance shall be limited in accordance with the practice adopted under rule 4(4)."

(*c*) In rule 5(1) for the words from " leave " to " notice " there shall be substituted the words " the writ or notice is to be served ".

(*d*) In rule 5(3) for the words from " in respect " to " granted " there shall be substituted the words " which is to be served out of the jurisdiction ".

(*e*) In rule 6(4) for the words from " to whom " to " served " there shall be substituted the words " wishes to serve notice of a writ ".

6. In Schedule 3, Order 12 shall be amended as follows:—

(*a*) Rule 5(*b*) shall be amended by substituting for the words from " fixed " to " (2) " the words " limited under Order 10, rule 2(2), Order 11, rule 1(3) ".

(*b*) Rule 10(4) shall be amended by adding at the end thereof the words " except that for the reference in rule 5(*b*) to Order 11, rules 1(3) and 4(4), there shall be substituted a reference to Order 11, rule 9(6) ".

7. In Schedule 3, Order 20, rule 10(1), shall be amended by adding at the end thereof the words " and, in the case of a writ or originating summons, causing it to be re-sealed and filing a copy thereof ".

8. In Schedule 3, Order 21, rule 2(4), shall be amended by inserting at the end of sub-paragraph (*b*) the words " or, if the action is proceeding in a district registry, to the registrar of that registry ".

9. In Schedule 3, at the end of Order 22 there shall be added the following rule:—

" *Investment of money in court*

13. Cash under the control of or subject to the order of the court may be invested in any manner specified in paragraphs 1 to 10 and 12 of Part II of Schedule 1 to the Trustee Investments Act 1961(**a**), as restricted in their operation by Part IV of that Schedule."

10. In Schedule 3, Order 62A, rule 1(2), shall be amended by substituting for paragraph (*b*) in the Table the following paragraph:—

" (*b*) A revenue cause or matter which does not fall within paragraph (*a*).	Chief Chancery Master's Office."

11. In Schedule 3, Order 62A, rules 5 and 6, shall be amended as follows:—

(*a*) In rules 5(1) and 6(1), after the words " the Court ", where first occurring, there shall be inserted the words " or, if an appeal to the Court of Appeal is pending in the cause or matter, to the Court of Appeal " and after the words " the Court ", where last occurring, there shall be inserted the words " or Court of Appeal, as the case may be ".

(*b*) In rules 5(2) and 6(2) for the words from " which " to " directs " there shall be substituted the words " or, in the case of an application to the Court of Appeal, by motion, and the summons or notice of the motion must, unless the Court or Court of Appeal, as the case may be, otherwise directs ".

(**a**) 9 & 10 Eliz. 2. c. 62.

12. In Schedule 3, Order 75, rule 8, shall be amended by adding at the end thereof the following paragraph:—

"(5) Where a writ by which an action in rem is begun is amended under Order 20, rule 1, after service thereof, Order 20, rule 1(2), shall not apply and, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on any defendant who has entered an appearance in the action or, if no defendant has entered an appearance therein, on the property or registrar mentioned in paragraph (1) of this rule."

13. In Schedule 3, Order 75, rule 24, shall be amended by adding at the end of paragraph (2) thereof the following paragraph:—

" Where the applicant or plaintiff does not, within the period fixed by this paragraph, set the action down for trial, any other party may set it down or an application may be made to the Court to dismiss the action for want of prosecution and, on the hearing of any such application, the Court may order the action to be dismissed accordingly or make such other order as it thinks just."

14. In Schedule 3, in Order 82, rule 5(2), the words " and no money was paid into court in the action " shall be omitted.

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

" ORDER 128

THE LIMITATION ACT 1963

Judge in person to exercise jurisdiction

1.—(1) Subject to paragraph (2), the jurisdiction of the High Court to grant leave for the purposes of section 1 of the Limitation Act 1963(a) shall be exercised by a judge in chambers in person.

(2) Paragraph (1) shall not apply in relation to an application for the grant of leave for the purposes of the said section 1 made during the trial of the relevant action.

(3) In this Order 'relevant action' has the same meaning as in section 2 of the Limitation Act 1963.

Application for leave

2.—(1) An application for the grant of leave for the purposes of of the said section 1 made before the trial of the relevant action must be made by ex parte summons which shall, if the application is made before the commencement of the relevant action, be an ex parte originating summons.

(2) The summons by which any such application is made must specify the cause of action to which the application relates and must be supported by an affidavit to which, in the case of an application made before the commencement of the relevant action, the statement of claim proposed to be served in that action must be exhibited.

(3) The requirement in section 2(1) of the Limitation Act 1963 that an application for the leave of the Court for the purposes of section 1 thereof shall be made ex parte shall not apply if the application is made during the trial of the relevant action.

(a) 1963 c. 47.

Copy of order granting leave to be served

3. Where the judge makes an order granting leave for the purposes of the said section 1 on an application made before the trial of the relevant action, a copy of the order must be served—

(*a*) if the application was made before the commencement of that action, with the writ of summons by which that action was begun, and

(*b*) if the application was made after the commencement of that action, on each defendant to that action, whether or not he has entered an appearance therein."

PART 2

MISCELLANEOUS

16. In Order XXXVII of the Rules of the Supreme Court 1883(**a**), in rule 19, the words from " or any person " to " country " are hereby revoked.

17. In Appendix 3 to the Supreme Court Costs Rules 1959(**b**), as amended(**c**), in paragraph (3) of Part II for the words before sub-paragraph (*a*) there shall be substituted the words " Where the plaintiff's solicitor has no place of business in the central district, or where he has a place of business in that district but any defendant is served outside that district ".

18. In paragraph (9) of the said Part II for the words from the beginning to " residence ", where last occurring, there shall be substituted the words " Where the amount recovered is not less than £300 and there is no available solicitor carrying on business within two miles of the place where the defendant is served, a mileage allowance in respect of each mile after the first two miles between that place ".

19. After the said Part II there shall be inserted the following Part:—

" PART IIA

Costs on judgment without trial for possession of land

4A.—(1) Where a writ of summons is indorsed with a claim for the recovery of land and the plaintiff obtains judgment—

(*a*) under Order 13, rule 4 or 5, in default of appearance, or

(*b*) under Order 19, rule 5 or 6, in default of defence, or

(*c*) under Order 14,

for possession of the land and costs, then, subject to sub-paragraph (2) of this paragraph, there shall be allowed the costs prescribed by paragraph 4B of this Appendix.

(2) Where the plaintiff is also entitled under the judgment to damages to be assessed, or where the plaintiff claimed any relief of the nature specified in Order 55, rule 5A, this Part of this Appendix shall not apply.

(**a**) Rev. 1903, XII, p. 54. (**b**) S.I. 1959/1958 (Schedule 2) (1959 II, p. 2535).
(**c**) The amending instruments are not relevant to the subject matter of these Rules.

4B.—(1) Subject to sub-paragraphs (2) and (3) of this paragraph, the costs to be allowed under this Part of this Appendix shall be the costs which would be allowed under Part I thereof if judgment had been obtained in the same circumstances, that is to say, in default of appearance or of defence or under Order 14, but the writ had been indorsed with a claim for a debt or liquidated demand only of £40 or upwards and judgment for not less than £75 but less than £300 had been obtained.

(2) Where the plaintiff obtains judgment not only for possession of the land and costs but also for a liquidated sum of not less than £100, sub-paragraph (1) of this paragraph shall apply as if the words '£75 but less than' were omitted.

(3) Paragraph 3 of this Appendix shall not apply to a case to which this Part of this Appendix applies but in every such case there shall be added to the costs allowed under the said Part the fee payable on the issue of the writ."

20. This instrument may be cited as the Rules of the Supreme Court (No. 2) 1963 and shall come into operation on 1st January 1964.

Dated 6th December 1963.

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

EXPLANATORY NOTE

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

Part 1 of these Rules makes a number of miscellaneous amendments in the R.S.C. (Revision) 1962, including the insertion in Order 22 of those Rules of a new rule prescribing the securities in which money in court may be invested (paragraph 9), and the addition of a new Order regulating the procedure on an application for leave of the court for the purpose of section 1 of the Limitation Act 1963 (paragraph 15). Part 2 amends the provisions of the Supreme Court Costs Rules 1959 in regard to the costs to be allowed on summary judgments for the recovery of land (paragraph 19) and the fixed costs allowed on summary judgments for the recovery of money (paragraphs 17 and 18).