3. A defendant shall be deemed to be served in a different district when he was served in a different county court district and at a place not less than five miles from the place of a previous service."

7. These Rules may be cited as the Rules of the Supreme Court (No. 2) 1956, and shall come into operation on the first day of September, 1956.

Dated the 30th day of July, 1956.

*Kilmuir*, C.
*Evershed*, M.R.
*Merriman*, P.
*A. T. Denning*, L.J.
*G. Justin Lynskey*, J.
*Frederic Sellers*, J.
*E. Milner Holland*
*J. R. Cumming-Bruce*
*L. S. Holmes*
*W. Charles Norton*

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EXPLANATORY NOTE

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

These Rules make a number of miscellaneous amendments in the Rules of the Supreme Court. Rule 5 alters the hours during which certain of the offices of the court are required to be open. Rule 6 (which is consequential on the County Courts Act, 1955) prescribes a new scale of costs applicable to proceedings brought in the High Court for the recovery of debts between £40 and £300.

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## 1956 No. 2001 (L. 22)

## The Rules of the Supreme Court (No. 3) 1956

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|---|---|
| *Made* - - - - | 17*th December*, 1956 |
| *Laid before Parliament* | 20*th December*, 1956 |
| *Coming into Operation* | 1*st January*, 1957 |

We, the Rule Committee of the Supreme Court, hereby make the following Rules:—

PART I

ADMIRALTY PROCEEDINGS

1.—(1) In Rule 16 of Order V (which relates to the issue of warrants of arrest in actions *in rem*) after paragraph (*a*) there shall be inserted the following paragraph:—

"(*b*) in an action *in rem* brought against a ship by virtue of subsection (4) of section 3 of the Administration of Justice Act, 1956, the affidavit shall state—

(i) whether or not the ship proceeded against is the ship in connection with which the claim arose,

(ii) that in the belief of the deponent the person who would, apart from section 4 of that Act, be liable on the claim in an action *in personam* was, at the time the cause of action arose, the owner or charterer, or in possession or control, of the ship in connection with which the claim arose and was also, at the time of the issue of the writ, the beneficial owner of all the shares in the ship proceeded against, and

(iii) the grounds for the deponent's belief."

(2) Paragraph (*d*) of the said Rule 16 shall be omitted and the paragraphs now designated (*b*) and (*c*) shall be redesignated (*c*) and (*d*).

**2.**—(1) In Order XI (which relates to service out of the jurisdiction), at the beginning of Rule 1 there shall be inserted the words "Except in the case of a writ to which Rule 1A of this Order applies".

(2) After the said Rule 1 there shall be inserted the following Rule:—

"1A. Where a writ of summons contains a claim to which section 4 of the Administration of Justice Act, 1956, applies, service out of the jurisdiction of the writ or of notice thereof may be allowed by the court or a judge if, but only if,—

(*a*) the defendant has his habitual residence or place of business within England and Wales; or

(*b*) the cause of action arose within inland waters of England and Wales or within the limits of a port of England and Wales; or

(*c*) an action arising out of the same incident or series of incidents is proceeding in the High Court or has been heard and determined in the High Court; or

(*d*) the defendant has submitted or agreed to submit to the jurisdiction of the High Court.

In this Rule "inland waters" and "port" have the same meanings as in subsection (1) of the said section 4."

(3) In Rule 2 of Order XI for the words "the last preceding rule" there shall be substituted the words "Rule 1 of this Order", and in Rule 7 of that Order the words "Rules 1 and 6 of" shall be omitted.

**3.** Order LIIIC (which relates to proceedings under the Shipowners' Negligence (Remedies) Act, 1905) shall be omitted.

## PART II

### MONEY PAID INTO COURT

**4.** In paragraph (1) of Rule 2 of Order XXII (which relates to the acceptance of money paid into court) after "thereupon he shall" there shall be inserted the words "except as otherwise expressly provided by these Rules and subject to Rule 14 of this Order".

**5.** In Rule 14 of Order XXII (which relates to the recovery of money by infants and persons of unsound mind) for paragraphs (1), (2) and (3) there shall be substituted the following paragraphs:—

"(1) In any cause or matter (other than a matrimonial cause or an application under section 23 or a claim under section 30 of the Matrimonial

Clauses Act, 1950) in which money or damages are claimed by or on behalf of a person who is an infant or of unsound mind, no settlement, compromise or payment and no acceptance of money paid into court, whenever entered into or made, shall so far as it relates to that person's claim be valid without the approval of the court or a judge.

(2) Where in any cause or matter whatever, money paid into court is accepted by or on behalf of any such person or money is adjudged, ordered or agreed to be paid to or for the benefit of any such person, the money shall be dealt with in accordance with directions given by the court or a judge and not otherwise; and without prejudice to the generality of the power of giving directions under this paragraph, the directions may provide that the money shall wholly or partly—

(*a*) be paid into the High Court and invested or otherwise dealt with there; or

(*b*) be transferred to or paid into such county court as may be specified in the directions."

**6.** In paragraph (4) of the said Rule 14, for the words "paragraph (3)" there shall be substituted the words "paragraph (2)" and after the words "transferred to" there shall be inserted the words "or paid into".

**7.** For paragraphs (5) and (6) of the said Rule 14 there shall be substituted the following paragraphs:—

"(5) Where in pursuance of this Rule money is ordered to be transferred from the High Court to a county court, then—

(*a*) in the case of any cause or matter in London or in the district registry of Manchester or of a cause or matter in the Chancery Division in the district registry of Liverpool, the proper officer of the High Court shall send two sealed copies of the judgment or order to the Accountant General and shall take steps to notify the registrar of the county court of the name and address of the plaintiff's next friend and solicitor (if any), and the Accountant General shall proceed in accordance with Rule 46 of the Supreme Court Funds Rules, 1927;

(*b*) in the case of any cause or matter in any other district registry or of a cause or matter in the Queen's Bench Division or Probate Division in the district registry of Liverpool, the proper officer of the High Court shall (if he is not the district registrar) send two sealed copies of the judgment or order and a notification of the name and address of the plaintiff's next friend and solicitor (if any) to the district registrar, and the district registrar shall, on receiving the money to be transferred, send a sealed copy of the order to the registrar of the county court and, on receiving from him an application duly made to transmit the money, send a cheque for the amount to the county court.

(5A) Where in pursuance of this Rule money is ordered to be paid into a county court, the proper officer of the High Court shall send a sealed copy of the judgment or order and a notification of the name and address of the plaintiff's next friend and solicitor (if any) to the registrar of the county court.

(6) Where in pursuance of this Rule money is ordered to be transferred to, or paid into, a county court the plaintiff's solicitor or, if the plaintiff has no solicitor, his next friend shall send to the registrar of the county court a copy of any document in the proceedings requested by the registrar."

**8.**—(1) In paragraph (7) of the said Rule 14, for the words from the beginning to "county court" in the first place where those words occur, there shall be substituted the words "Where in pursuance of this Rule money is transferred to, or paid into, a county court", and after the words "transfer to" there shall be inserted the words "or payment into".

(2) Paragraph (8) of the said Rule 14 shall be omitted.

(3) In paragraph (12) of the said Rule 14, for the words from the beginning to "county court" in the first place where those words occur, there shall be substituted the words "Where in pursuance of this Rule money has been or is to be transferred to, or paid into, a county court".

**9.** In Rule 17 of Order XXII (which relates to the investment of funds in court) after "Two and Three-quarters per Cent. London County Consolidated Stock, 1960–1970" there shall be inserted the words "London County Five and a Half per Cent. Stock, 1977–1981".

**10.** Rule 20 of Order XXII (which relates to payment into court in Admiralty actions) shall be omitted.

## PART III

### ENFORCEMENT OF JUDGMENTS AND ORDERS

**11.** In Rule 5 of Order XXXV (which relates to proceedings in a district registry after judgment), after paragraph (*e*) there shall be inserted the following paragraph :—

"(*ee*) orders charging land or an interest in land."

**12.** At the end of Rule 15 of Order XLII (which authorises the party entitled to execution to levy the expenses of execution in addition to the judgment or order) there shall be added the words "except where the judgment or order sought to be enforced is for less than forty pounds and does not entitle the plaintiff to costs against the person against whom the execution is issued".

**13.** In paragraph (1) of Rule 17 of Order XLII (which relates to the issue of writs of *fieri facias*), for the words "subject nevertheless as follows: (*a*)" there shall be substituted the word "but" and sub-paragraph (*b*) shall be omitted.

**14.** After Rule 18 of Order XLII there shall be inserted the following Rule :—

"19.—(1) Where a judgment is given or an order made for the payment of money by any person and the court or a judge is satisfied on application made at the time of the judgment or order or at any time thereafter by the judgment debtor or other party liable to execution that there are special circumstances which render it inexpedient to enforce the judgment or order or that the judgment debtor is unable from any cause to pay the money, then, notwithstanding anything in Rule 17, 17A or 18 of this Order, the court or judge may by order stay execution of the judgment or order by writ of *fieri facias* either absolutely or for such period and subject to such conditions as the court or judge thinks fit.

(2) An application under this Rule if not made at the time the judgment is given or the order made shall be made by summons and may be so made notwithstanding that an appearance has not been entered.

(3) An application made by summons shall be supported by an affidavit made by or on behalf of the applicant which shall state the grounds of the application and the facts necessary to substantiate them and, in particular, shall, in the case of an application on the grounds of the applicant's inability to pay, disclose his income, the nature and value of any property of his and the amount of any other liabilities of his.

(4) A summons under this Rule and a copy of the affidavit in support shall be served not less than four clear days before the return day on the party entitled to enforce the judgment or order or his solicitor and may, without prejudice to any other mode of service, be so served by ordinary pre-paid post.

Any document served by post under this paragraph shall be deemed to have been served at the time at which it would have been delivered in the ordinary course of post.

(5) Any order staying execution under this Rule may be varied or revoked by a subsequent order."

**15.** The following words and provisions (which have become obsolete in consequence of the abolition of writs of elegit by section 34 of the Administration of Justice Act, 1956) shall be omitted :—

(*a*) in Rule 2 of Order XLIC the word " elegit " ;

(*b*) in Order XLII, in Rule 8, the word " elegit " and in paragraph (1) of Rule 17 the words " or one or more writ or writs of elegit " ;

(*c*) in the heading to Order XLIII, the word " ELEGIT " ;

(*d*) in Rule 1 of Order XLIII the words " and of elegit " ;

(*e*) in Rule 3 of Order XLIII the words " or any writ of elegit " and the words " nor any lay fee in the bailiwick of the sheriff to whom such writ was directed " ;

(*f*) in Rule 5 of Order XLIII the words " or of elegit " ;

(*g*) Rule 9B of Order LV ;

(*h*) in Appendix G, Form No. 2 ;

(*i*) in Appendix H, Form No. 3, in Form No. 5, the words " or any lay fee in his bailiwick " and, in Form No. 7, the words " or delivered if after the return to an elegit, etc.," the words " in either case " and the words " or any lay fee in his bailiwick ".

**16.** In Order XLVI (which relates, among other things, to charging orders) after Rule 1B there shall be inserted the following Rule :—

" 2.—(1) The power to make any order under section 35 of the Administration of Justice Act, 1956, imposing a charge on land or interest in land of a judgment debtor shall be exercisable by the court or a judge.

(2) Any such order shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter and imposing the charge until that time in any event.

(3) An application for an order under the said section 35 shall, if made in pending proceedings, be made *ex parte* in the Division in which the proceedings are then pending and shall in any other case be made by *ex parte* originating summons in the Chancery Division.

(4) The application shall be supported by an affidavit made by or on behalf of the applicant—

(*a*) identifying the judgment or order to be enforced, and stating the name of the judgment debtor on whose land or interest it is sought to impose a charge and the amount remaining unpaid under the judgment or order at the time of the application;

(*b*) specifying the land on which, or on an interest in which, it is sought to impose a charge; and

(*c*) stating that to the best of the information and belief of the deponent the land or interest in question is the judgment debtor's and stating the sources of the deponent's information and the grounds for his belief.

(5) On the further consideration of the matter the court or judge shall, unless it appears (whether on the representation of the judgment debtor or otherwise) that there is sufficient cause to the contrary, make the order absolute with or without modifications:

Provided that, unless the court or judge otherwise directs, an order shall not be made absolute under this Rule except on proof of service of a copy of the order on the judgment debtor.

(6) Where on the further consideration of the matter it appears that the order should not be made absolute, the court or judge shall discharge the order."

**17.** In Appendix H, the words "and £ for costs of execution" with or without addition of the word "etc." and the words "besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses," whenever occurring in the indorsement to a writ, shall be preceded and followed by square brackets, and a note shall be inserted after each indorsement containing those words in the following terms:—

"The words in square brackets shall be struck out where the judgment or order is for less than £40 and does not entitle the plaintiff to costs against the person against whom the execution is issued."

## PART IV

## RESTRICTIVE TRADE PRACTICES ACT, 1956

**18.** After Order LIVH there shall be inserted the following Order:—

### "ORDER LIVJ

*Proceedings under Restrictive Trade Practices Act, 1956*

1. In this Order—

"the Act" means the Restrictive Trade Practices Act, 1956;

"the Registrar" means the Registrar of Restrictive Trading Agreements.

2.—(1) All proceedings in the High Court under Part I of the Act shall be assigned to the Chancery Division.

(2) No such proceedings shall be commenced in a district registry.

3.—(1) Any originating summons or notice of motion under this Order shall be intituled in the matter of the Act and shall include a heading specifying the agreement to which the application relates or otherwise identifying the subject matter of the application.

(2) Any originating summons or notice of motion under this Order shall specify the provision of the Act under which the application is made.

(3) Any originating summons or notice of motion under this Order shall be served on the respondent or respondents not less than seven days before the hearing of the summons or motion.

(4) No appearance need be entered to an originating summons under this Order.

4.—(1) Every application under section 13 of the Act shall be made by originating summons.

(2) An originating summons under subsection (1) of section 13 shall specify particulars of the rectification sought by the applicant; and an originating summons under subsection (2) of that section shall specify the declaration or declarations claimed by the applicant.

(3) In the case of an application under section 13 by the Registrar, any one or more of the parties to the agreement to which the application relates may be made respondent to the summons, and in the case of any application under that section by a person other than the Registrar, the Registrar shall be made respondent to the summons.

(4) Any party or parties to an agreement made respondent to a summons under this Rule shall, except in so far as the court or a judge may otherwise direct, be treated as representing all the other parties to the agreement.

5.—(1) Every application for an order under section 15 of the Act shall be made by originating summons.

(2) Where it is sought to examine a person in the capacity of director, manager, secretary or other officer of a body corporate to which notice has been given under section 14 of the Act, the body corporate, as well as that person, shall be made a respondent to the summons.

(3) Any order made under section 15 for the attendance and examination of any person shall be an order for his attendance and examination before the court or a judge.

(4) If any person who attends for examination in pursuance of such an order before a judge sitting otherwise than in open court refuses to be sworn or to answer any question which the judge may put or allow to be put to him, or to produce any particulars, documents or information which the judge has required him to produce, the judge may adjourn the examination into open court.

(5) When the examination of a person in pursuance of any such order has been concluded, the notes of the examination shall be filed in the Central Office.

6.—(1) An application for an authorisation or order under section 18 of the Act may be made either by originating summons or by originating motion.

(2) In the case of an application for an authorisation under paragraph (*a*) of subsection (1) of section 18, one or more of the persons alleged to be parties to the agreement shall be made respondent to the summons or motion, and paragraph (4) of Rule 4 of this Order shall apply as it applies to a summons under that Rule.

(3) In the case of an application for any other relief under section 18, all persons against whom an order is sought shall be made respondents to the summons or motion.

7. Subject to the provisions of this Order, the Rules of the Supreme Court for the time being in force, and the practice and procedure in the Chancery Division, shall apply."

**19.** In Order LVIIIA (which relates to appeals from tribunals by case stated to the Court of Appeal), after Rule 3 there shall be inserted the following Rule:—

"4. This Order applies to the Restrictive Practices Court as it applies to a tribunal other than the Lands Tribunal."

## PART V

### MISCELLANEOUS

**20.** In Rule 4 of Order VII (which relates to the withdrawal of a solicitor who has ceased to act for a party in any proceedings), paragraph (2) shall be omitted, paragraph (3) shall be re-numbered (2), paragraph (4) shall be re-numbered and stand as Rule 5, paragraph (5) shall be re-numbered (3), and after the paragraph re-numbered (3) there shall be inserted the following paragraph:—

"(4) After an order made under paragraph (1) of this Rule has been entered in the appropriate office or the certificate of an assisted person has been revoked or discharged, then, until the party to whom the order or certificate relates either appoints another solicitor or gives notice of his intention to act in person and an address for service and in either case complies with the provisions of Rule 2 relating to notice of the appointment or, as the case may be, of the intention to act in person, any document in respect of which personal service is not required may be served on that party—

(*a*) in a matrimonial cause, by delivering the document to him or by leaving it at, or sending it by prepaid registered post to, his last-known address; or

(*b*) in any other case, by filing the document with the proper officer."

**21.**—(1) In Order XLIB (which relates mainly to the registration of judgments under the Foreign Judgments (Reciprocal Enforcement) Act, 1933) the word "foreign" shall be omitted in the second place where it occurs in Rule 1 and in both places where it occurs in Rule 12.

(2) In Rule 2 of that Order, after the words "seal and" in sub-paragraph (*a*) of paragraph (1) there shall be inserted the words "where the judgment is not in the English language".

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

"15. This Order shall apply to an award in proceedings on an arbitration in any part of Her Majesty's dominions or other territory to which

Part II of the Administration of Justice Act, 1920, extended immediately before Part I of the Foreign Judgments (Reciprocal Enforcement) Act, 1933, was extended thereto if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place, as it applies in relation to a judgment given by that court, subject, however, to the following modifications :—

(*a*) for references to the country of the original court there shall be substituted references to the place where the award was made ; and

(*b*) the affidavit required by Rule 2 of this Order may, in lieu of exhibiting a certified copy of the award as mentioned in sub-paragraph (*a*) of paragraph (1) of that Rule, exhibit the award itself or a verified or otherwise duly authenticated copy thereof, and shall state (in addition to the other matters required by that Rule) that to the best of the information and belief of the deponent the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place :

and any form of affidavit, summons or writ of execution mentioned in this Order shall be modified as circumstances may require."

**22.** In Rule 12 of Order LIV (which in the Queen's Bench Division confers on a Master the jurisdiction of a judge in chambers except in the cases specified) after paragraph (*f*) there shall be inserted the following paragraph :—

" (*g*) applications under Order LIVL for leave to institute proceedings under section 330 of the Lunacy Act, 1890, as subsequently amended ".

**23.** After Order LIVK there shall be inserted the following Order :—

" ORDER LIVL

*Applications for Leave to Institute Proceedings*

1. An application for leave to institute proceedings under—

(*a*) section 330 of the Lunacy Act, 1890, as amended by section 16 of the Mental Treatment Act, 1930 ; or

(*b*) section 1 of the Leasehold Property (Repairs) Act, 1938 ;

shall be made to the court or a judge by originating summons intituled in the matter of the enactment in question and of the proceedings proposed to be instituted.

2. No appearance need be entered to an originating summons under this Rule.

3. The application shall be supported by an affidavit made by or on behalf of the applicant setting out the grounds on which leave to institute proceedings is sought and any facts necessary to substantiate those grounds."

**24.** Rule 4 of Order LXVIII (which applies to matrimonial causes certain of the provisions of Order VII relating to change of solicitor) shall be omitted.

**25.** These Rules may be cited as the Rules of the Supreme Court (No. 3) 1956, and shall come into operation on the 1st day of January, 1957.

Dated the 17th day of December, 1956.

*Kilmuir*, C.
*Goddard*, C.J.
*Evershed*, M.R.
*A. T. Denning*, L.J.
*H. B. Vaisey*, J.
*E. Milner Holland.*
*J. R. Cumming-Bruce.*
*W. Charles Norton.*

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## EXPLANATORY NOTE

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

Part I amends the Rules of the Supreme Court relating to Admiralty proceedings so as to give effect to Part I of the Administration of Justice Act, 1956. Part II makes provision, consequential on section 26 of that Act, for the disposal of money recovered by infants or persons of unsound mind in proceedings in any Division of the High Court; and adds London County Council 5½ per cent. Stock, 1977–1981, to the list of securities in which money in court may be invested.

Part III deals with the enforcement of judgments and orders. The effect of Rules 12 and 17 is that a plaintiff will not be entitled to the costs of executing judgment for less than £40 in the High Court unless his judgment carries costs against the person against whom execution is issued. Rule 14, following a recommendation made by the Committee on Supreme Court Practice and Procedure, enables the Court to stay execution, if it thinks fit, where the judgment debtor is unable to pay. Rule 16 prescribes the procedure for obtaining a charging order on land, which, under section 35 of the Administration of Justice Act, 1956, replaces the writ of elegit, and Rule 15 makes amendments which are consequential on the abolition of that writ.

Part IV prescribes the procedure to be followed on applications to the High Court under sections 13, 15 and 18 of the Restrictive Trade Practices Act, 1956. All such proceedings are assigned to the Chancery Division.

Part V makes miscellaneous amendments. Rule 20 provides for the service of documents where a solicitor has ceased to act for any party, whether as a result of the withdrawal of a legal aid certificate or otherwise. Rule 21 is consequential on section 51 of the Administration of Justice Act, 1956. Rules 22 and 23 provide that leave to bring proceedings under the Lunacy Act, 1890, or the Leasehold Property (Repairs) Act, 1938, may be obtained in chambers but that in the former case the application must be made to a judge.