1960 No. 2327 (L. 22)

The Rules of the Supreme Court (No. 4), 1960

Made - - - -	*12th December*, 1960
Laid before Parliament	*19th December*, 1960
Coming into Operation	*2nd January*, 1961

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 :—

1. The title of Order XLIV (which relates to attachment) shall be amended by adding the words " and committal ".

2. For rule 2 of Order XLIV there shall be substituted the following rule :—

" 2.—(1) Subject to rules 3, 4 and 6 of Order XLII, the power of the High Court or Court of Appeal to imprison for contempt of court may be invoked by means of proceedings for leave to issue a writ of attachment or for an order of committal.

(2) The foregoing paragraph shall not affect the power of the High Court or Court of Appeal to make an immediate order of committal against a person guilty of contempt in the face of the court.

(3) An application for leave to issue a writ of attachment or for an order of committal shall be made by motion after notice to the person sought to be attached or committed, and the notice shall be served personally on that person unless the Court or a judge or, as the case may be, the Court of Appeal dispenses with such service.

(4) The Court hearing the application may sit in private in the following cases, that is to say—

(*a*) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant ;

(*b*) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Act, 1959(b) ;

(*c*) where the application arises out of proceedings in which a secret process, discovery or invention was in issue ;

(*d*) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private ;

but, except as aforesaid, the application shall be heard in open court.

(5) If on the hearing of the application the person sought to be attached or committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

(a) 15 & 16 Geo. 5. c. 49. (b) 7 & 8 Eliz. 2. c. 72.

(6) This rule shall not apply to cases to which Order LIX, rule 26 or 26A applies."

3. In Order LII, rule 4 (which makes special provision for certain motions), after the word "attachment" there shall be inserted the words "or for an order of committal".

4. At the end of Order LVIII (which relates to appeals to the Court of Appeal), there shall be added the following rule:—

"20.—(1) In the case of an appeal to the Court of Appeal under section 13 of the Administration of Justice Act, 1960(**a**), the notice of appeal shall be served on the proper officer of the court from whose order or decision the appeal is brought as well as on the party or parties required to be served under rule 3 of this Order.

This paragraph shall not apply in relation to an appeal to which rule 18 of this Order applies.

(2) Where, in the case of an appeal under the said section 13 to the Court of Appeal or to the House of Lords from the Court of Appeal, the appellant is in custody, the Court of Appeal may order his release on his giving security (whether by recognizance, with or without sureties, or otherwise and for such reasonable sum as the Court may fix) for his appearance within ten days after the judgment of the Court of Appeal or, as the case may be, of the House of Lords on the appeal shall have been given, before the court from whose order or decision the appeal is brought unless the order or decision is reversed by that judgment.

(3) An application for the release of a person under the last foregoing paragraph pending an appeal to the Court of Appeal or House of Lords under the said section 13 shall be made by motion, and notice of the motion shall, at least twenty-four hours before the day named therein for the hearing, be served on the proper officer of the court from whose order or decision the appeal is brought and on all parties to the proceedings in that court who are directly affected by the appeal.

(4) Paragraphs (6) and (7) of rule 13 of the Rules of the Supreme Court (Criminal Proceedings), 1938(**b**) (which relates to the grant of bail by the High Court), shall apply in relation to the grant of bail under this rule by the Court of Appeal as they apply in relation to the grant of bail in criminal proceedings by the High Court, but with the substitution for references to a judge in chambers of references to the Court of Appeal and for references to the defendant of references to the appellant."

5.—(1) In Order LIX, in rule 3 (5) (which provides for an appeal from a refusal of a judge in chambers to grant leave to apply for certain orders), after the word "but" there shall be inserted the words "subject to section 1 of the Administration of Justice Act, 1960".

(2) In Order LIX, at the end of rule 19 (which relates to the hearing of an application for a writ of habeas corpus ad subjiciendum), there shall be added the following paragraph:—

"(2) Where the application is heard by a judge, then if—

(*a*) the application constitutes a criminal cause or matter, and

(*b*) the judge refuses to order the release of the person restrained,

the judge shall direct that the application be made by motion to a Divisional Court."

(**a**) 8 & 9 Eliz. 2. c. 65.
(**b**) S.R. & O. 1938/1576 (1938 II, p. 3154); S.I. 1949/721 (1949 I, p. 4007).

6. In Order LIX the following rules shall be inserted after rule 36A:—

"*Applications, etc., under Administration of Justice Act,* 1960

36B.—(1) Any of the following applications, that is to say—

(*a*) an application under section 2 of the Administration of Justice Act, 1960, or under that section as applied by section 13 of that Act, to extend the time within which an application may be made to a Divisional Court for leave to appeal to the House of Lords under section 1 of that Act, or section 13 thereof, from an order or decision of that Court, and

(*b*) an application by a defendant under section 9 (3) of that Act to a Divisional Court for leave to be present on the hearing of any proceedings preliminary or incidental to an appeal to the House of Lords under section 1 of that Act from a decision of that Court,

shall be made to a Divisional Court except in vacation when it may be made to a judge in chambers.

(2) An application to a Divisional Court in accordance with the foregoing paragraph, if not made in the proceedings before the Divisional Court from whose order or decision the appeal in question is brought, shall be made by motion in open court, and an application to a judge in chambers in accordance with that paragraph shall, in the case of such an application as is referred to in sub-paragraph (*a*) thereof, be made by summons and, in the case of such an application as is referred to in sub-paragraph (*b*) thereof, be made ex parte unless, in the latter case, the judge otherwise directs.

(3) Notwithstanding anything in Order LII, rule 3, no notice of a motion by which such an application as is referred to in sub-paragraph (*b*) of paragraph (1) of this rule is made need be given to any party affected thereby unless the Divisional Court otherwise directs.

(4) Where any application to which this rule applies is made in vacation to a single judge and the judge refuses the application, the applicant shall be entitled to have the application determined by a Divisional Court.

36C.—(1) Except as provided by paragraph (2) of this rule, an appeal to a Divisional Court of the High Court under section 13 of the Administration of Justice Act, 1960, shall be heard by a Divisional Court of the Queen's Bench Division.

(2) An appeal under the said section 13 from an order or decision of a magistrates' court under subsection (3) of section 54 of the Magistrates' Courts Act, 1952(**a**), shall be heard—

(*a*) where the order or decision was made to enforce an order of such a court under the Matrimonial Proceedings (Magistrates' Courts) Act, 1960(**b**), by a Divisional Court of the Probate, Divorce and Admiralty Division;

(*b*) where the order or decision was made to enforce an order of such a court under the Guardianship of Infants Acts, 1886 and 1925, by a Divisional Court of the Chancery Division.

(3) An appeal to a Divisional Court under the said section 13 shall be brought by notice of motion and the notice shall state the grounds of the appeal.

(4) Unless the Court or a judge gives leave to the contrary, there shall be not more than four clear days between the date on which the order or

(**a**) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 55. (**b**) 8 & 9 Eliz. 2. c. 48.

decision appealed against was made and the day named in the notice of motion for the hearing.

(5) Not less than one clear day before the day named in the notice for the hearing the appeal shall be entered and the notice served on the clerk or registrar of the court from whose order or decision the appeal is brought and on all parties to the proceedings in that court who are directly affected by the appeal.

(6) The appeal may be heard and determined upon such evidence of what occurred in the court from whose order or decision the appeal is brought as the Divisional Court may deem sufficient, including, in particular, in the case of any evidence given orally, a copy of any note made by the judge.

36D.—(1) Where, in the case of an appeal under section 13 of the Administration of Justice Act, 1960, to a Divisional Court or to the House of Lords from a Divisional Court, the appellant is in custody the High Court may order his release on his giving security (whether by recognizance, with or without sureties, or otherwise and for such reasonable sum as the Court may fix) for his appearance, within ten days after the judgment of the Divisional Court or, as the case may be, of the House of Lords, on the appeal shall have been given, before the court from whose order or decision the appeal is brought unless the order or decision is reversed by that judgment.

(2) Paragraphs (1) to (7) of rule 13 of the Rules of the Supreme Court (Criminal Proceedings), 1938, shall apply in relation to an application to the High Court for bail pending an appeal under the said section 13 to which this rule applies, and to the admission of a person to bail in pursuance of an order made on the application, as they apply in relation to an application to that Court for bail in criminal proceedings, and to the admission of a person to bail in pursuance of an order made on the application, but with the substitution, for references to the defendant, of references to the appellant, and, for references to the prosecutor, of references to the proper officer of the court from whose order or decision the appeal is brought and to the parties to the proceedings in that court who are directly affected by the appeal."

7. In Order LXIII, in rule 12 (which includes a provision enabling the vacation judges to sit either separately or together as a Divisional Court) the words " either separately or " are hereby revoked.

8. The following amendments shall be made in rule 13 of the Rules of the Supreme Court (Criminal Proceedings) 1938 :—

(1) For paragraph (6) there shall be substituted the following paragraph :—

" (6) Without prejudice to section 37 of the Criminal Justice Act, 1948(a), as originally enacted or as applied by any other enactment, the judge in chambers by whom an application for bail in criminal proceedings (other than an application made under the said section 37, as so enacted or applied) is heard may order that the defendant shall be released from custody on entering into a recognizance, with or without sureties, or giving other security before a justice of the peace or any other person authorised by virtue of section 95 (1) of the Magistrates' Courts Act, 1952, to take a recognizance where a magistrates' court having power to take it has, instead of taking it, fixed the amount in which the principal and his sureties, if any, are to be bound."

(a) 11 & 12 Geo. 6. c. 58.

(2) In paragraph (7) after the word "peace" there shall be inserted the words "or other person" and for the words "the justice" there shall be substituted the words "that person".

(3) For paragraph (8) there shall be substituted the following paragraph:—

"(8) Where in pursuance of an order of a judge in chambers a person is released from custody on entering into a recognizance or giving other security for his appearance before a magistrates' court, and in breach of his undertaking fails to appear, the recognizance or, as the case may be, payment of any sum due in respect of the security, may be enforced by that court, in the case of a recognizance, in manner provided by section 96 of the Magistrates' Courts Act, 1952, and, in the case of other security, in the same manner as payment of the sum due in respect of the security would have been enforceable if the person giving the security had instead entered into a recognizance, and the said section 96 shall in that case apply accordingly with the necessary modifications."

(4) In paragraph (9), after the words "High Court", wherever occurring there shall be inserted the words "or House of Lords", and for the words "petty sessional division or place as the court of summary jurisdiction" there shall be substituted the words "petty sessions area as the magistrates' court".

9. This instrument may be cited as the Rules of the Supreme Court (No. 4), 1960, and shall come into operation on the second day of January, 1961.

Dated the 12th day of December, 1960.

Kilmuir, C.
Parker of Waddington, C.J.
Evershed, M.R.
Merriman, P.
Harold Danckwerts, J.
Reginald W. Goff.
John F. Donaldson.
Charles Norton.
W. O. Carter.

EXPLANATORY NOTE

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

These Rules are consequential on the provisions of the Administration of Justice Act, 1960, relating to appeals from a Divisional Court of the Queen's Bench Division in criminal cases, to appeals in cases of contempt of court and to applications for habeas corpus.

Rule 2 amends the procedure on applications for attachment or committal for contempt of court and requires the application to be heard in open court except in certain cases in which the court may sit in private.

Rule 4 makes provision for appeals to the Court of Appeal in contempt cases and for the release on bail of a person appealing to the Court of Appeal or from that Court to the House of Lords. Corresponding provision for appeals to a Divisional Court is made by the new rules 36C and 36D added to Order 59 by Rule 6. The new rule 36B in Order 59 deals with the procedure on certain applications connected with appeals from a Divisional Court of the Queen's Bench Division to the House of Lords in a criminal cause or matter.

Rule 5 makes the necessary amendments relating to applications to a Divisional Court for habeas corpus or one of the prerogative orders, while the effect of Rule 7 is that even in vacation a Divisional Court must consist of not less than two judges.

Rule 8 makes minor amendments in the procedure relating to applications for bail.