1960 No. 2328 (L. 23)

The Rules of the Supreme Court (No. 5), 1960

Made - - - -	12*th December*, 1960
Laid before Parliament	19*th December*, 1960
Coming into Operation	2*nd 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. In Rule 17 of Order XXII (which relates to investment of funds in court) for the words from "Two and a Half per Cent. Metropolitan Consolidated Stock" to "London County Five per Cent. Stock, 1980–1983" there shall be substituted the words "All stocks issued by the London County Council".

2. After Order LIV P there shall be inserted the following Order:—

"ORDER LIV Q

PROCEEDINGS RELATING TO CHARITIES

1.—(1) In this Order—

"the Act" means the Charities Act, 1960(b);

"charity proceedings" means proceedings in the High Court brought under the court's jurisdiction with respect to charities or brought under the court's jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes;

"Commissioners" means the Charity Commissioners for England and Wales;

"certificate" means a certificate that a case is a proper one for an appeal.

(2) References in this Order to the Commissioners shall, in relation to any matter in which the Minister of Education has acted under or by virtue of the Act, be construed as references to that Minister.

2. Charity proceedings and proceedings brought in the High Court by virtue of the Act shall be assigned to the Chancery Division and, except as provided by the next following Rule, shall be commenced by originating summons.

3.—(1) An application shall not be made under the proviso to section 18 (11) of the Act for leave to appeal against an order of the Commissioners unless the applicant has requested the Commissioners to grant a certificate and they have refused to do so.

(2) An application under the said proviso for leave to appeal or under section 28 (5) of the Act for leave to take charity proceedings shall be made within twenty-one days after the refusal by the Commissioners of a certificate or, as the case may be, of an order authorising the taking of proceedings.

(a) 15 & 16 Geo. 5. c. 49. (b) 8 & 9 Eliz. 2. c. 58.

(3) The application shall be made by lodging in the Chancery Registrars' Office a statement showing—

(*a*) the name, address and description of the applicant;

(*b*) particulars of the order against which it is desired to appeal or of the proceedings which it is desired to take;

(*c*) the date of the Commissioners' refusal to grant a certificate or an order authorising the taking of proceedings;

(*d*) the grounds on which the applicant alleges that it is a proper case for an appeal or for taking proceedings.

(4) The application may be made *ex parte* in the first instance and if it is made with the consent of any other party to the proposed appeal or proposed proceedings that fact shall be mentioned in the statement.

(5) If the judge on considering the application so directs, the Commissioners shall furnish him with a statement in writing of their reasons for refusing a certificate or, as the case may be, an order authorising the taking of proceedings, and a copy of any such statement shall be sent from the Chancery Registrars' Office to the applicant.

(6) The judge may determine the application on the documents without a hearing or may direct that it be heard in chambers.

(7) Where the application is directed to be heard in chambers, notice of the day and time fixed for the hearing shall be sent from the Chancery Registrars' Office to the applicant, and where the application is determined without a hearing, a copy of the order made on the application shall be sent from that Office to the Commissioners and the applicant.

4. Where an appeal is brought against any order or decision of the Commissioners—

(*a*) the originating summons shall state the grounds of the appeal and, except with the leave of the judge hearing the appeal, the appellant shall not be entitled to rely on any ground not so stated;

(*b*) the Attorney-General shall, unless he is the appellant, be made a respondent to the summons in addition to any other persons who are necessary and proper respondents thereto.

5. Any document required or authorised to be served on the Commissioners or the Attorney-General in proceedings under this Order shall be served on the Treasury Solicitor in accordance with Order LXVII, Rule 1A (2).

6. Subject to the provisions of the Act and this Order, the practice and procedure of the Chancery Division shall apply to proceedings under this Order."

3. Rules 13 and 14 of Order LV are hereby revoked.

4. The following amendments shall be made in Order LIXA (which deals with proceedings under section 9 of the Tribunals and Inquiries Act, 1958(**a**)):—

(1) For the title there shall be substituted the title "PROCEEDINGS ON APPEAL, ETC., FROM CERTAIN TRIBUNALS AND MINISTERS".

(2) In Rule 5 for the words "In this Order" there shall be substituted the words "In the foregoing Rules of this Order".

(3) After Rule 5 there shall be added the following Rule:—

"6.—(1) Rule 1 of this Order shall apply to proceedings in the High Court brought by virtue of section 34 of the Caravan Sites and

(a) 6 & 7 Eliz. 2. c. 66.

Control of Development Act, 1960(a), or of paragraph 4 of the Third Schedule to that Act, as it applies to proceedings in that Court under section 9 of the Tribunals and Inquiries Act, 1958.

(2) An appeal on a point of law shall lie to the High Court under sub-section (1) of the said section 34 against any decision of the Minister of Housing and Local Government given in any such proceedings as are referred to in that sub-section.

(3) Rule 2 of this Order shall apply in relation to an appeal under the said sub-section (1), or under sub-paragraph (1) of the said paragraph 4, subject to the following modifications—

(*a*) for the references to a Tribunal and to the chairman thereof there shall be substituted references to the said Minister, and

(*b*) the words enclosed in brackets in paragraph (3) shall be omitted.

(4) If, on the hearing of such an appeal as is referred to in the last foregoing paragraph, the Court is of the opinion that the decision of the said Minister was erroneous in point of law, the Court shall not set aside or vary the decision but may remit the matter to the Minister with the opinion or direction of the Court for re-hearing and determination by him.

(5) A case stated by the said Minister under sub-section (2) of the said section 34, or under sub-paragraph (2) of the said paragraph 4, shall be signed by or on behalf of the Minister and served on such party to the proceedings before him as he thinks appropriate; and paragraphs (5) and (6) of Rule 4 of this Order shall apply as if the case had been stated under that Rule but subject to the modification mentioned in paragraph (3) (*a*) of this Rule.

(6) If the said Minister wishes to take part in any proceedings in the High Court brought by virtue of the said section 34 or the said paragraph 4, he shall be entitled to be treated as a party to those proceedings and to appear and be heard accordingly.

(7) Any document required by virtue of this Rule to be served on the said Minister shall be served on the solicitor to the Ministry of Housing and Local Government in accordance with Order LXVII, Rule 1A (2).

(8) References in this Rule, or in any other provision of this Order as applied by this Rule, to a party to proceedings before the said Minister shall be construed as references to the appellant in those proceedings, to the local planning authority and to any person (other than that appellant) on whom the notice to which those proceedings related was served."

5. After Order LIXB there shall be inserted the following Order :—

"ORDER LIXC

CASES STATED BY MENTAL HEALTH REVIEW TRIBUNALS

1. A question of law stated by virtue of subsection (5) of section 124 of the Mental Health Act, 1959(b), by a Mental Health Review Tribunal for determination by the High Court shall be determined by a Divisional Court of the Queen's Bench Division.

2.—(1) A party to proceedings before a Mental Health Review Tribunal shall not be entitled to apply to the High Court for an order under the

(a) 8 & 9 Eliz. 2. c. 62. (b) 7 & 8 Eliz. 2. c. 72.

said subsection (5) requiring the Tribunal to state a case unless—

(*a*) within twenty-one days after the Tribunal's decision was communicated to him or after the Tribunal complied or refused to comply with a request duly made by him for the reasons for their decision, whichever is the later, he made a written request to the Tribunal to state a case, and

(*b*) within twenty-one days after the last-mentioned request was made, the Tribunal either refused or failed to comply with that request.

(2) An application under the foregoing paragraph shall be made by notice of motion specifying the grounds of the application and the question of law on which it is desired that a case shall be stated and also, where the Tribunal refused to comply with a request to state a case, the reasons, if any, given by them for their refusal.

(3) Within fourteen days after the Tribunal's refusal to state a case or after the expiration of the period of twenty-one days referred to in paragraph (1) (*b*) of this Rule, according as the Tribunal refused or failed within that period to state a case, the notice of motion shall be served on the secretary to the Tribunal and a copy shall be lodged in the Crown Office and Associates' Department.

3.—(1) Every case stated by a Tribunal by virtue of the said subsection (5) shall be signed by the president of the Tribunal and served on the party to the proceedings before the Tribunal on whose application it was stated or, if the case was stated by the Tribunal of their own motion, on such party to those proceedings as the Tribunal think appropriate.

(2) The party on whom a case is served under the foregoing paragraph shall, within fourteen days after service—

(*a*) lodge the case in the Crown Office and Associates' Department together with a notice of motion stating his contentions on the question of law,

(*b*) serve on any other party to the proceedings before the Tribunal a copy of the case and of the notice of motion, and

(*c*) serve on the secretary to the Tribunal a copy of the notice of motion;

and there shall be at least seven days between the service of the notice and the day named therein for the hearing.

(3) The Tribunal shall be entitled to appear and be heard in the proceedings on the case stated.

(4) On the hearing of the case the High Court may, if it thinks fit, amend the case or order it to be sent back to the Tribunal for amendment and may draw inferences of fact from the facts stated in the case.

(5) If the Court is of opinion that any decision of the Tribunal on the question of law raised by the case was erroneous, the Court may give any direction which the Tribunal ought to have given under section 123 of the Mental Health Act, 1959.

4.—(1) References in this Order to a party to proceedings before a Mental Health Review Tribunal shall be construed—

(*a*) in the case of proceedings begun by an application to the Tribunal, as references to the applicant and to any person to whom, in accordance with rules made under section 124 of the

Mental Health Act, 1959, the Tribunal sent a copy of the application ; and

(*b*) in the case of proceedings begun by a reference to the Tribunal made by the Minister of Health, as references to that Minister and to any person to whom, in accordance with the said rules, the Tribunal sent a notification of the reference.

(2) For the purposes of Order 16B in its application to proceedings to which this Order relates, a party to proceedings before a Mental Health Review Tribunal who, by reason of mental disorder within the meaning of the Mental Health Act, 1959, is incapable of managing and administering his property and affairs shall be deemed not to be a person under disability within the meaning of that Order unless he is also an infant.

(3) Any document required by this Order to be served on the Minister of Health shall be served, in accordance with Order LXVII, Rule 1A (2), on the solicitor to the Ministry of Health.

(4) Subject to the last foregoing paragraph, Order LIX, Rules 40, 44 and 45, shall apply in relation to proceedings to which this Order relates as they apply in relation to proceedings to which that Order relates."

6. At the end of rule 3 of the Supreme Court Costs Rules, 1959(**a**), there shall be added the following paragraph:—

"(8) Where a claimant (other than a person claiming to be a creditor), having established a claim to be entitled under a judgment or order in the judge's chambers in accordance with Part XI of Order LV, has been served with notice of the judgment or order pursuant to rule 60 of that Order, he shall, if he enters an appearance, be entitled as part of his costs of action (if allowed) to costs incurred in establishing his claim, unless the Court otherwise directs ; and where such a claimant fails to establish his claim or any part of it he may be ordered to pay the costs of any person incurred in opposing it."

7. The Rules of the Supreme Court (Charitable Trusts Recovery), 1892(**b**), are hereby revoked.

8. These Rules may be cited as the Rules of the Supreme Court (No. 5), 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.

(**a**) S.I. 1959/1958 (1959 II, p. 2535) (Second Schedule). (**b**) Rev. XXII, p. 93.

EXPLANATORY NOTE

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

Rule 1 of these Rules adds all London County Council stocks to the list of securities in which money in court may be invested. Rule 2 makes fresh provision for proceedings relating to charities in consequence of the Charities Act, 1960. Rules 3 and 7 revoke rules rendered obsolete by that Act. Rules 4 and 5 regulate proceedings in the High Court under section 34 and paragraph 4 of the Third Schedule of the Caravan Sites and Control of Development Act, 1960, and section 124 (5) of the Mental Health Act, 1959. Rule 6 amends the Supreme Court Costs Rules so as to clarify the rights and liabilities, as regards costs, of a non-creditor claimant in certain Chancery proceedings.