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Circuit Court Rules

Order: 32

Discovery and inspection of documents and interrogatories

1. Where a request in writing for voluntary discovery has been made at least fourteen days prior to the issuing of the notice of motion and no agreement in writing to make discovery in the terms requested has been received within such period, any party may apply to the Court or to the County Registrar by notice of motion to be served not less than four clear days before the hearing thereof, for an order directing any other party to any proceeding to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Judge may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the proceeding, or make such order on such terms as to the security for the costs of discovery or otherwise, and either generally or limited to certain classes of documents, as he may think fit. Such affidavit of documents shall be in accordance with Form 31 of the Schedule of Forms annexed hereto.
2. The affidavit to be made by a party against whom such order as is mentioned in the last preceding Rule has been made shall specify which, if any, of the documents therein mentioned he objects to produce and it shall be in the form in the Schedule of Forms hereto with such variations as circumstance may require.
3. It shall be lawful for the Judge at any time during the pendency of any cause or matter to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such cause or matter, as the Judge shall think right; and the Judge may deal with such documents, when produced, in such manner as he shall think just.
4. Every party to a cause or matter shall be entitled at any time by notice in writing, to give notice to any party, in whose pleading or affidavit reference is made to any document, to produce such document for the inspection of the party giving

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such notice, or of his Solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf, unless he satisfy the Judge that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse, which the Judge shall deem sufficient for not complying with such notice; in which case the Judge may allow the same to be put in evidence on such terms as to costs and otherwise as he shall think fit.

5. If the parties served with notice under Rule 4 omit to give notice of a time for inspection, or object to give inspection, the Judge or the County Registrar may, on the application of the party desiring it, make an order for inspection at such time and in such place and in such manner as he thinks right. Such application shall be made by motion on notice to be served not later than four clear days before the hearing thereof and founded upon an affidavit showing of what documents inspection is sought and that they are in the possession or power of the other party.

6. If any party fails to comply with any order for discovery or inspection of documents, he shall be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended.

7. In every cause or matter, the costs of discovery shall, unless otherwise ordered by the Judge, be allowed, as part of the costs of the party seeking discovery, either as between party and party or solicitor and client, where, and only where, such discovery shall be certified by the Judge.

8. This Order shall apply to infant plaintiffs and defendants, and to their next friends and guardians *ad litem*.

9. Any person not a party to the cause or action before the Court who appears to the Court or to the County Registrar to be likely to have or to have had in his possession custody or power any documents which are relevant to an issue arising or likely to arise out of the cause or action or is or is likely to be in a position to give evidence relevant to any such issue may by leave of the Court or the County Registrar upon the application of any party to the said cause or action be directed by order of the Court or the County Registrar to answer such interrogatories or to make discovery of such documents or to permit inspection of such documents provided that, in advance of the issuing of such notice of motion, such discovery shall be requested to be made voluntarily in accordance with the provisions of Rule 1 hereof, the request for voluntary discovery being made to the person against whom discovery is sought and the other parties to the proceedings. The provisions of this Order shall apply mutatis mutandis as if the said Order of the Court or the County Registrar had been directed to a party to the said cause or action provided always that the party seeking such order shall indemnify such person in respect of all costs thereby reasonably incurred by such person and such costs borne by the said party shall be deemed to be costs of that party in the proceedings.

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