

BOOK REVIEW:
**“CONSOLIDATED CIRCUIT COURT RULES:
PRACTICE AND PROCEDURE”**
BY MARGARET CORDIAL
(ROUNDHALL SWEET AND MAXWELL)

THE HON. MR. JUSTICE ESMOND SMYTH*

The consolidated rules of the Circuit Court were launched by the Minister for Justice in November 2001 and Margaret Cordial’s excellent commentary followed shortly afterwards. It is an understatement to say that both were long over due. The previous rules were published nearly fifty years earlier and continued in force during a period when more than sixty new statutory instruments were made which affected the practice and procedure of the Circuit Court. Indeed, unless you were a diligent practitioner who regularly perused *Iris Oifigiúil*, you might have been completely unaware of the existence of new rules, still less be able to locate them easily. How much more difficult it must have been for a member of the public searching for a route map to the Circuit Court to enable them pursue a legal right of their choice – particularly if they did not have the benefit of a barrister or solicitor to assist them. Clearly something needed to be done to rectify this undesirable situation, so the Circuit Court Rules Committee embarked some years ago on the task of consolidating the rules. Their overdue arrival has significantly improved access to the Rules and Procedures of the Circuit Court.

To make matters even better, Margaret Cordial has written a learned and authoritative commentary on the consolidated rules, wherein she carefully cites and analyses the latest decisions and outlines the various proofs which are required to ground applications to the Circuit Court. What

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she has achieved through her diligent research is not merely a commentary, but a substantial legal text book as well. It may be the author's first venture into the minefield of legal writing but it is a journey which has brought forth some buried treasures. There are lucid summaries of the up to date law on a variety of legal topics. For example there is a comprehensive treatment of section 390 of the Companies Act, 1963 which sets out the latest law dealing with the jurisdiction of the courts to award security for costs against a limited company and she quotes the special circumstances which would justify a court in not making such an order. Likewise there is an interesting discourse on the exclusive jurisdiction clauses under Article 17 of the Brussels Convention and the author reminds us correctly that these requirements must be strictly applied and interpreted in accordance with European Community Law.

In her treatment of the practice and procedure for landlord and tenant applications the author draws attention to the up to date law on the subject and covers the law relating to forfeiture in some detail. Likewise, readers are reminded of the provisions of the Civil Liability Act, 1961 (a code which does not always get the attention it deserves from lawyers), particularly in the context of the Circuit Court Rules and she also refers to recent decisions on the construction and the interpretations of the M.I.B.I. agreements, as well as citing recent decisions on that topic. Some aspects of day to day practice are highlighted as well - she reminds us that an application for substituted service should not be brought until three *bona fide* attempts have been made to serve the defendant personally, at a place and at times where it would reasonably be expected that the defendant would be found. Practitioners should also note the author's commentary on the provisions of Order 11, relating to the issue of civil bills, their service and entry. In this context it is worth noting that the provisions of section 7 (6) (ii) of the Courts Act, 1964 have been repealed by the Courts and Courts Officers Act, 2002 so that now a civil bill is deemed to issue at the time when it is presented for issuing in the Circuit Court office and is sealed

and marked with a record number, thus obviating the Statute of Limitations difficulty which had dogged this issue previously. It also brings the procedure more into line with the position in the High Court.

May I say also, it is a mark of the changes that have taken place in the Circuit Court over the years that there is a place for such a substantive commentary on its rules. These are in fact the third set of rules for the Circuit Court since its original establishment by the 1924 Courts of Justice Act. Since then significant developments have taken place in the role the Circuit Court occupies in the administration of justice in Ireland. The volume of the Circuit Court's business has increased dramatically and its jurisdiction has enlarged, to the extent that there is a noticeable trend for the Circuit Court to absorb on a concurrent basis some matters which were previously within the exclusive jurisdiction of the High Court, e.g. applications for nullity; applications under section 27 of the Planning Act; some applications under the Competition Act and more recently, applications to restore companies to the Registrar of Companies. Some idea of the increase in the volume of its business can be gleaned from the fact that in 1990 for example, 29,000 civil bills were issued in the Circuit Court, whereas by the year 2000 that had increased to more than 41,000 civil bills, and in that year as well over 2,200 criminal trials came before the court and nearly 16,000 civil trials were dealt with also. In passing, it may be worth noting that there were only eight judges assigned to the Circuit Court in 1924; now there is a complement of 31 judges including the President of the Circuit Court.

This developing trend towards enlargement of the Circuit Court's jurisdiction merely echoes the prophetic words of Fitzgibbon J. in *Sligo Corporation v. Gilbride*, when he said that:

The only limitations upon the jurisdiction of the Circuit Court are those expressed or implied in the provisions of the Courts of

Justice Act, and, subject to those limitations, the Circuit Court has within its locality all the jurisdiction of the High Court.¹

Further jurisdictional changes are anticipated as a consequence of the deliberations of the Working Group on the Jurisdiction of the Courts. A unified criminal court has been suggested, encompassing both the High and Circuit Courts. Alternatively, the criminal jurisdiction of the Circuit Court may be enlarged, on a concurrent basis with the High Court to include murder and rape.

In the meantime changing social attitudes to family life have, over the years, led to the growth of a large family law jurisdiction. Indeed probably the most significant body of new rules to be found in the consolidated rules are those set out in Order 59 relating to family law. This order provides, *inter alia*, for decrees of nullity; declarations of parentage and blood tests when parentage is an issue to applications; and for all of the various reliefs under the Family Law Act, 1995 and the Family Law (Divorce) Act, 1996. Indeed, at this stage, could I venture to suggest that the clarity and uncomplicated language used in the family law rules together with their user-friendly procedural approach has been acknowledged by many - including lay litigants for whom the new forms and procedures make it easier and less costly to bring applications in the family courts without legal assistance. This approach owes much to the praiseworthy efforts of the drafters of the 1950 rules, with which these consolidated rules are inextricably bound up. In that context, could I also draw attention to two features of the consolidated rules, namely the greater uniformity of time limits for taking the various procedural steps and the provision that in future, the initiating documentation will be a Civil Bill or an originating Notice of Motion.

Mention of uniformity of approach brings me to another question: whether in future, the rule making

¹ [1929] I.R. 351 at 361.

committees of the courts should adopt a more unified approach to procedural time limits and the way claims are initiated and progressed? This may be a question for another day, but it is one which merits consideration.

What is clear is that some streamlining of court procedures - particularly in personal injury cases - may well be necessary in future, if the cost issue (so topical at the moment) is to be addressed fairly. Should we, for example, look at the exchange of witness statements, including expert and medical witnesses at an early stage - perhaps at the time of the issue of the Civil Bill? This would undoubtedly reduce, or perhaps even eliminate, the need for many pre-trial applications for particulars and discovery and could have the desirable effect of encouraging an increased number of early settlements. To some extent, this is already happening both in the High Court and the Circuit Court but not at such an early stage of the proceedings. In this context, interesting suggestions are emerging from the Bar Council and the Law Society, and insofar as court rules and procedures are concerned it is an area which is shortly to be addressed by the Committee on Court Practice and Procedure.

While I have digressed a little from the author's commentary, it is because I am concerned, that in the implementation of any future court reforms affecting the Circuit Court, we should not lose sight of the policy of decentralising jurisdiction which was at the heart of the Circuit Court establishment in the first place.

As Kennedy C.J. said in *O'Connor v. O'Brien*:

The policy of the Act is unmistakable. It is that the great bulk of the ordinary litigation not involving very heavy financial consequences and of the criminal business of the country shall be dealt with and disposed of in the local venue.²

² [1925] 2 I.R. 24 at 28.

He went on to say in *Hosie v. Lawless*:

[T]he ordinary every-day actions, those not involving very large sums of money or raising exceptional questions for determination, should be in the ordinary course tried in the local venue by the Circuit Court ...³

I have said before that because of the local nature of its jurisdiction, the Circuit Court can serve two important social and constitutional objectives; it can bring justice and access to legal remedies to the local community and by the adoption of common sense procedures appropriate to its real needs, it can continue to demonstrate to Court users that securing access to the courts need not be a costly, inconvenient, or protracted experience. It follows that care should be taken, when consideration is given to the further enlargement of its jurisdiction, that we do not lose sight of these objectives.

Barry Nicholas, in his work on Roman Law, said that one of the strengths of the Roman Lawyers was their clear sense of the needs of social and commercial life. They had:

... an eye for the simplest method of achieving a desired practical result, and a readiness to reject the logic of their own conclusions when it conflicted with the demands of convenience.⁴

So, for the Roman lawyers, the law was essentially an exercise in “practical reason”.

Of course, it is true that rules are the servants of justice and not its master and that pragmatism and convenience are not always the wisest or fairest approach to seeking out the justice of individual cases. However, for

³ [1927] I.R. 464 at 471.

⁴ Nicholas, *Roman Law*, p. 1.

those engaged in the drafting of procedural rules for the courts - even for those planning jurisdictional changes - the Roman example surely has the ring of common sense to it.

In conclusion, Margaret Cordial's commentary will restore accessibility to the rules and procedures of Circuit Court practice. I think it will also bring about a greater consistency in the interpretations and application of our rules. The quality of this volume, and the breadth of the legal issues which it covers will make it an invaluable guide for practitioners, students of the law and members of the public alike. I have no doubt that it will attract readers with an interest in the law relating to the practice and procedure of the other courts as well.

It is published in an attractive and convenient layout and is also available on CD-ROM. May I again compliment the publishers for their professionalism and their continual encouragement of legal authors.

"Consolidated Circuit Court Rules - Practice and Procedure", by Margaret Cordial (Roundhall Sweet and Maxwell, 2001), looseleaf.