1966. No. 149 **[NC]**

SUPREME COURT, NORTHERN IRELAND PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (No. 4) 1966

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 7 of the Northern Ireland Act 1962(a) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby exercise those powers and all other powers enabling us in that behalf as follows:—

1. For Order XIV of the Rules of the Supreme Court (Northern Ireland) 1936(b), which relates to leave to sign judgment and defend where writ specially indorsed, there shall be substituted the Order set out in Schedule 1 hereto.

2. In Order XVI, which relates to parties, Part V rules 48 to 55 shall be revoked.

3. Immediately after Order XVI there shall be inserted the Order XVIA set out in Schedule II hereto.

4. Order XXXVIII, which relates to affidavits, shall be amended as follows:—

(1) For rule 3 the following rule shall be substituted:—

"**3.**—(1) Subject to paragraphs (2) and (3), every affidavit sworn in a cause or matter shall be entitled in that cause or matter.

(2) Where a cause or matter is entitled in more than one matter, it shall be sufficient to state the first matter followed by the words 'and other matters', and where a cause or matter is entitled in a matter or matters and between parties, that part of the title which consists of the matter or matters may be omitted.

(3) Where there are more plaintiffs than one, it shall be sufficient to state the full name of the first followed by the words 'and others', and similarly with respect to defendants.

(4) An affidavit sworn for the purposes of any proceedings and entitled in the cause or matter or between the parties to those proceedings, as the case may be, may be filed with the writ, originating summons, originating notice of motion or petition by which the proceedings are begun and when so filed the affidavit shall be marked with the record number of the proceedings."

(2) For rule 11 the following rule shall be substituted:—

"**11.**—(1) There shall be on every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note, unless the Court or a Judge shall otherwise direct.

(a) 10 & 11 Eliz. 2. c. 30. (b) S.R. & O. 1936 (No. 70) II, p. 2559.

(2) Every exhibit referred to in an affidavit or a statement of facts shall be marked or labelled with the initials of the deponent followed by a number."

5. In Order LV, which relates to Chambers in the Chancery Division, for rule 7 there shall be substituted the following rule:—

"**7.** Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons, returnable in Chambers, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require, that is to say,—

payment of moneys secured by the mortgage or charge;

sale;

delivery of possession to the mortgagee or person entitled to the charge by the mortgagor or person having the property subject to the charge or by any other person in, or alleged to be in possession of the property;

redemption;

reconveyance;

delivery of possession by the mortgagee."

6. In Order LXA, which relates to jurisdiction of registrars, rule 1(1) shall be amended by the insertion immediately after item (v) of the following item:—

"(VA) applications under Order XVIA rules 1(2), 5(1)(*b*), 7(2), 8(1) and 9(3) (third party procedure)."

7. In Order LXII rule 59, which relates to funds in Court, for the figure "£100" there shall be substituted the figure "£500".

8. The Forms in Schedule III hereto shall be substituted for Form No. 1 in Appendix B of the Rules of the Supreme Court.

9. In Form No. 15 of Appendix M of the Rules of the Supreme Court for the figure "£100" wherever occurring there shall be substituted the figure "£500".

10. These rules may be cited as the Rules of the Supreme Court (Northern Ireland) (No. 4) 1966, and shall come into force on 15th September, 1966.

Dated 29th June, 1966.

(Signed) *MacDermott*
H. A. McVeigh
Charles L. Sheil
Robert Lowry
E. W. Jones
Leordard I. G. Fox
James J. Napier

SCHEDULE I Rule 1

Order to be substituted for Order XIV of the Rules of the Supreme Court

ORDER XIV

Summary Judgment

Application by plaintiff for summary judgment

1.—(1) Where in an action to which this rule applies a statement of claim has been delivered to, or a writ specially indorsed under Order III rule 6 has been served on, a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court or a Judge for judgment against that defendant.

(2) This rule applies to every action begun by writ other than a Probate or Admiralty action or an action which includes:—

(*a*) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or

(*b*) a claim by the plaintiff based on an allegation of fraud.

(3) No application against the Crown shall be made under this rule.

Manner in which application under rule 1 *must be made*

2.—(1) An application under rule 1 must be made by summons supported by a statement of facts, verified by affidavit, stating the facts on which the claim, or the part of a claim, to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the case may be, or no defence except as to the amount of any damages claimed.

(2) Unless the Court or a Judge otherwise directs, a statement of facts for the purposes of this rule may contain statements of information and belief with the sources and grounds thereof.

(3) The summons, a copy of the statement of facts and the affidavit in support and of any exhibits referred to therein must be served on the defendant not less than four clear days before the return day.

(4) Where an application is made by the Crown under rule 1 or rule 5, it shall be sufficient for the purposes of this rule if the application is supported by an affidavit which must be made by—

(*a*) an officer duly authorised by the Attorney General of Northern Ireland or by the Government department concerned; or

(*b*) the solicitor acting for the Crown; or

(*c*) an officer duly authorised by the solicitor acting for the Crown;

stating that in the deponent's belief the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim to which the application relates or no defence except as to the amount of any damages claimed and Order XXXVIII rule 4, in its application to any such affidavit, shall be modified accordingly.

Judgment for plaintiff

3.—(1) Unless on the hearing of an application under rule 1 either the Court or a Judge dismisses the application or the defendant satisfies the Court

or a Judge with respect to the claim, or the part of a claim, to which the application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part, the Court or a Judge may give such judgment for the plaintiff against that defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed.

(2) The Court or a Judge may by order, and subject to such conditions, if any, as may be just, stay execution of any judgment given against a defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action.

Leave to defend

4.—(1) A defendant may show cause against an application under rule 1 by a statement of facts verified by an affidavit or otherwise to the satisfaction of the Court or a Judge.

(2) Rule 2(2) applies for the purposes of this rule as it applies for the purposes of that rule.

(3) The Court or a Judge may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim, to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial (in cases which under these rules may be tried without a jury) or otherwise as the Court or a Judge thinks just.

(4) On the hearing of such an application the Court or a Judge may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity—

(*a*) to produce any document;

(*b*) if it appears to the Court or a Judge that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

Application for summary judgment on counterclaim

5.—(1) Where a defendant in an action begun by writ to which rule 1 applies, has served a counterclaim on the plaintiff, then, the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim or to a particular part of such a claim, apply to the Court or a Judge for judgment against the plaintiff on that claim or part.

(2) Rules 2, 3 and 4 shall apply in relation to an application under this rule as they apply in relation to an application under rule 1 but with the following modifications, that is to say—

(*a*) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;

(*b*) the words in rule 3(2) "any counterclaim made or raised by the defendant in" shall be omitted; and

(*c*) the reference in rule 4(3) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.

(3) No application shall be made against the Crown under this rule.

Directions

6. Where the Court or a Judge—

(*a*) orders that a defendant or a plaintiff have leave (whether conditional or unconditional) to defend an action or counterclaim, as the case may be, with respect to a claim or part of a claim; or

(*b*) gives judgment for a plaintiff or a defendant on a claim or part of a claim but also orders that execution of the judgment be stayed pending the trial of a counterclaim or of the action, as the case may be,

the Court or a Judge may give such directions as to the further conduct of the action as may be necessary, and may order the action or the counterclaim to be set down for trial forthwith, with or without any further pleadings, as the Court or a Judge may think necessary.

Right to proceed with residue of action or counterclaim

7.—(1) Where on an application under rule 1 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action as respects any other claim or as respects the remainder of the claim or against that defendant or any other defendant.

(2) Where on an application under rule 5 a defendant obtains judgment on a claim or part of a claim made in a counterclaim against the plaintiff, he may proceed with the counterclaim against the plaintiff as respects any other claim or as respects the remainder of the claim or against any other defendant to the counterclaim.

Judgment for delivery up of chattel

8. Where the claim to which an application under rule 1 or rule 5 relates is for the delivery up of a specific chattel and the Court or a Judge gives judgment under this Order for the applicant, the Court or a Judge shall have the same power to order the party against whom judgment is given to deliver up the chattel without giving him an option to retain it on paying the assessed value thereof as if the judgment had been given after trial.

Disposal of action by consent

9. The Court or a Judge may, with the consent of all parties, dispose of the action or counterclaim in a summary manner, and on such terms as to costs or otherwise as may be just.

Setting aside judgment

10. Any judgment given against a party who does not appear at the hearing of an application under rule 1 or rule 5 may be set aside or varied by the Court or a Judge on such terms as may be just.