1965. No. 134 [NC]

SUPREME COURT, NORTHERN IRELAND PROCEDURE

The Rules of the Supreme Court (Northern Ireland) (No. 3) 1965

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. Order LXXXIV of the Rules of the Supreme Court (Northern Ireland) 1936(b), which relates to procedure on the Crown side, shall be amended as follows:—

(1) For rules 8 to 17A the following rules shall be substituted—

"Removal of Indictments into Queen's Bench Division by Certiorari

8.—(1) An application for an order of certiorari to remove an indictment into the Queen's Bench Division shall be made by motion to a Judge in the Queen's Bench Division.

(2) The notice of motion together with a copy of the supporting affidavit shall be served, if the applicant is the prosecutor, on the defendants, and, if the applicant is the defendant, on the prosecutor, or the Attorney General, if the prosecution is being conducted by him, and on all other defendants, if any.

(3) There shall be at least eight clear days between the service of the notice and the day named therein for the hearing.

(4) An application under this rule shall be made within a period of six months from the date on which the indictment was preferred.

9. No indictment shall be removed into the Queen's Bench Division either at the instance of the prosecutor or of the defendant unless the Judge is satisfied by the party making the application that—

(*a*) a fair and impartial trial of the case cannot be had in the court below; or

(*b*) some question of law of more than usual difficulty and importance is likely to arise upon the trial; or

(*c*) a view of the premises in respect of which any indictment is preferred may be required for a satisfactory trial.

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

10.—(1) An applicant for an order of certiorari to quash an indictment shall not question the validity of the indictment unless before the hearing of the motion he has lodged a copy thereof verified by affidavit in the Central Office or accounts for his failure to do so to the satisfaction of the Judge.

(2) The Judge on granting an order of certiorari for the purpose of quashing an indictment may direct that the indictment be quashed forthwith on its removal into the High Court.

11.—(1) Where the application for an order of certiorari for the removal of an indictment is made at the instance of the prosecutor, he shall on the grant of the order enter into a recognizance, with sufficient sureties, conditioned—

(*a*) to make up the record;

(*b*) to give notice of trial and proceed to trial at the next assizes to be held for the county wherein the indictment was found, or in such other court or place and at such time as the Court or Judge may direct; and

(*c*) to pay the costs of the defendant, subsequent to the removal of the indictment so far as he may be ordered to do so, if the defendant is acquitted.

(2) Where the application for the order of certiorari for the removal of an indictment is made at the instance of the defendant, he shall enter into a recognizance with sufficient sureties conditioned—

(*a*) to appear and plead (and in cases of felony in open Court) to the said indictment;

(*b*) to give notice of trial, and proceed to the trial of the indictment at the next assizes to be held in the county wherein the indictment was found, or in such other court or place and at such time as the Court or Judge may direct;

(*c*) personally to appear from day to day at the trial of such indictment and if necessary in the Queen's Bench Division and not depart until he shall be discharged by the Court; and

(*d*) to pay the costs of the prosecution, subsequent to the removal of the indictment so far as he may be ordered to do so, if the defendant or any one of the defendants is convicted.

12.—(1) Where a recognizance is required under rule 11, no order of certiorari to remove an indictment shall be issued from the Central Office unless the person at whose instance the order was granted has first entered into a properly conditioned recognizance.

(2) The officer who issues the order of certiorari shall certify at the foot of the order that a recognizance has been entered into in accordance with rule 11.

(3) Where the party at whose instance the order was granted fails to enter into a properly conditioned recognizance within 7 days from the grant of the order, then the order of certiorari shall lapse and the Court to whom such order is directed may proceed with the trial of the indictment as if the order had never been granted.

13.—(1) Where, by virtue of an order of certiorari, an indictment which would otherwise be tried at the assizes or in the county court is to be tried in the Queen's Bench Division or at a different assize or county court the Registrar shall transmit an office copy of the order of certiorari to the clerk of the Crown and Peace of the county in which the indictment would otherwise be tried, and the clerk shall thereupon transmit the indictment and recognizances, depositions, exhibits or other relevant documents to the Registrar or the clerk of the Crown and Peace of the county in which the indictment is to be tried.

(2) All recognizances transmitted as aforesaid shall have effect with the substitution, for any references to the court at which the trial would be held but for the order, of references to the court at which the trial is to be held and the clerk of the Crown and Peace or the Registrar at the last mentioned court shall amend the recognizances accordingly and shall, subject to any directions given by that Court, make such amendments of any other of the said documents as appear to be necessary in consequence of the change of the court of trial.

Application for leave to apply for certiorari, mandamus or prohibition

14.—(1) Subject to rule 8 (which relates to indictments), no application for an order of certiorari, mandamus or prohibition shall be made unless leave therefor has been granted in accordance with this rule.

(2) An application for such leave shall be made by lodging with the Registrar:—

(*a*) a statement setting out the name and description of the applicant, the relief sought, the grounds on which it is sought and the facts relied on; and

(*b*) an affidavit or affidavits, as the case may require, verifying the statement.

(3) The Registrar shall submit every such application to a Judge, and shall inform the applicant of the result of the application, unless the application is decided in the presence of the applicant.

(4) Upon the consideration of an application for leave the Judge may direct the applicant to appear before him in Court.

(5) A Judge, on the hearing of an application for leave in Court, may make an order of certiorari, mandamus or prohibition either ex parte or otherwise where he considers that, in the special circumstances of the case, such an order should be made forthwith.

(6) Before any application for leave under this rule is refused, the applicant shall be given an opportunity of being heard.

(7) The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the Judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the Judge otherwise directs.

(8) The Judge in granting leave may impose such terms as to costs and as to giving security as he thinks fit.

15.—(1) Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, conviction or other proceeding, unless application for leave is made not later than six months after the date of