

SCHEDULE 1

The Rules of the Supreme Court (Northern Ireland) 1980 COMMENCEMENT AND PROGRESS OF PROCEEDINGS

ORDER 4

TRANSFER AND CONSOLIDATION OF PROCEEDINGS

Transfer between Divisions

1. A cause or matter may, at any stage of the proceedings therein, be transferred from one Division to another by order of the Court made in the Division in which the cause or matter is proceeding.

[E.r. 3]

Transfer of certain pending matters to Chancery Division

2. Where an order has been made—

(a) for the winding up of any company,

(b) for the administration under the direction of the Court of the estate of a deceased person,

then, notwithstanding rule 1, the Chancery Judge may by order at any stage transfer to the Chancery Division any cause or matter brought by or against that company, or the executors or administrators of that person.

Transfers to and hearings before another Judge

3. Any judge who consents to do so may by arrangement with the Lord Chief Justice or the judge before whom a cause or matter is pending or to whom it has been assigned, hear such cause or matter or any part thereof or application therein.

When parties must be heard before transfer

4.—(1) Subject to paragraph (2), all such transfers and arrangements as are mentioned in this Order may be made with or without the application or consent of any party.

(2) Before a cause or matter is transferred from one Division to another the parties must be given an opportunity of being heard.

Consolidation of actions

5. Where two or more causes or matters are pending in the same Division, then, if it appears to the Court—

(a) that some common question of law or fact arises in both or all of them, or

(b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or

(c) that for some other reason it is desirable to make an order under this rule,

the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.

[E.r. 10]

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ORDER 5

MODE OF BEGINNING CIVIL PROCEEDINGS IN HIGH COURT

Mode of beginning civil proceedings

1. Subject to the provisions of any statutory provision or of these Rules, civil proceedings in, the High Court may be begun by writ originating summons, originating motion or petition.

[E.r. 1]

Proceedings which must be begun by writ

2. Subject to the provisions of any statutory provision or of these Rules, by virtue of which any proceedings are expressly required to be begun otherwise than by writ, the following proceedings must, notwithstanding anything in rule 4, be begun by writ, that is to say, proceedings—

- (a) in which a claim is made by the plaintiff for any relief or remedy for any tort, other than trespass to land;
- (b) in which a claim made by the plaintiff is based on an allegation of fraud;
- (c) in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a statutory provision or independently of any contract or any such provision), where the damages claimed consist of or include damages in respect of the death of any person or in respect of personal injuries to any person or in respect of damage to any property;
- (d) in which a claim is made by the plaintiff in respect of the infringement of a patent.

[E.r. 2]

Proceedings which must be begun by originating summons

3.—(1) Proceedings by which an application is to be made to the High Court or a judge thereof under any statutory provision must be begun by originating summons except where by these Rules or by or under any statutory provision the application in question is expressly required or authorised to be made by some other means.

- (2) This rule does not apply to an application made in pending proceedings.

[E.r. 3]

Proceedings which may be begun by writ or originating summons

4.—(1) Except in the case of proceedings which by these Rules or by or under any statutory provision are required to be begun by writ or originating summons or are required or authorised to be begun by originating motion or petition, proceedings may be begun either by writ or originating summons as the plaintiff considers appropriate.

- (2) Proceedings—

- (a) in which the sole or principal question at issue is, or is likely to be, one of the construction of a statutory provision or of any instrument made under a statutory provision or of any deed, will, contract, or other document, or some other question of law, or
- (b) in which there is unlikely to be any substantial dispute of fact,

are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or Order 86 or for any other reason considers the proceedings more appropriate to be begun by writ.

[E.r. 4]

Proceedings to be begun by motion or petition

5. Proceedings may be begun by originating motion or petition if, but only if, by these Rules or by or under any statutory provision the proceedings in question are required or authorised to be so begun.

[E.r. 5]

Right to sue in person

6.—(1) Subject to paragraph (2) and to Order 80 rule 2, any person (whether or not he sues as a trustee or personal representative or in any other representative capacity) may begin and carry on proceedings in the High Court by a solicitor or in person.

(2) Except as expressly provided by or under any statutory provision a body corporate may not begin or carry on any such proceedings otherwise than by a solicitor.

[E.r. 6]

ORDER 6

WRITS OF SUMMONS : GENERAL PROVISIONS

Form of writ

1. Every writ must be in Form No. 1, 2, 3 or 4 in Appendix A, as is appropriate.

[E.r. 1]

Indorsement of claim

2. Before a writ is issued it must be indorsed—

- (a) with a statement of claim or, if the statement of claim is not indorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby;
- (b) where the claim made by the plaintiff is for a debt or liquidated demand only, with a statement of the amount claimed in respect of the debt or demand and for costs and also with a statement that further proceedings will be stayed if, within the time limited for appearing, the defendant pays the amount so claimed to the plaintiff or his solicitor;
- (c) where the claim made by the plaintiff is for possession of land, with a statement showing—
 - (i) whether the claim relates to a dwelling-house; and
 - (ii) if it does, whether the dwelling-house is one to which Part III of the Rent (Northern Ireland) Order, 1978(1), applies;
- (d) where the action is brought to enforce a right to recover possession of goods, with a statement showing the value of the goods.

[E.r. 2]

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Indorsement as to capacity

3. Before a writ is issued it must be indorsed—
- (a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues;
 - (b) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued.

[E.r 3]

Indorsement as to solicitor and address

- 4.—(1) Before a writ is issued it must be indorsed—
- (a) where the plaintiff sues by a solicitor, with the plaintiff's address and the solicitor's name or firm and a business address of his within the jurisdiction;
 - (b) where the plaintiff sues in person, with the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent.
- (2) The address for service of a plaintiff shall be—
- (a) where he sues by a solicitor, the business address of the solicitor indorsed on the writ;
 - (b) where he sues in person, the address within the jurisdiction indorsed on the writ.
- (3) Where a solicitor's name is indorsed on a writ, he must, if any defendant who has been served with or who has entered an appearance to the writ requests him in writing so to do, declare in writing whether the writ was issued by him or with his authority or privity.
- (4) If a solicitor whose name is indorsed on a writ declares in writing that the writ was not issued by him or with his authority or privity, the Court may on the application of any defendant who has been served with or who has entered an appearance to the writ, stay all proceedings in the action begun by the writ.

[E.r. 5]

Concurrent writ

- 5.—(1) One or more concurrent writs may, at the request of the plaintiff, be issued at the time when the original writ is issued or at any time thereafter before the original writ ceases to be valid.
- (2) Without prejudice to the generality of paragraph (1) a writ for service within the jurisdiction may be issued as a concurrent writ with one which, or notice of which, is to be served out of the jurisdiction and a writ which, or notice of which, is to be served out of the jurisdiction may be issued as a concurrent writ with one for service within the jurisdiction.
- (3) A concurrent writ is a true copy of the original with such differences (if any) as are necessary having regard to the purpose for which the writ is issued.

[E.r. 6]

Issue of writ

- 6.—(1) No writ which, or notice of which, is to be served out of the jurisdiction shall be issued without the leave of the Court :

Provided that if every claim made by a writ is one which by virtue of a statutory provision the High Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving

rise to the claim did not take place within the jurisdiction, the foregoing provision shall not apply to the writ.

(2) A writ by which proceedings assigned to the Chancery Division are begun must be issued out of the Chancery Office;

(3) Subject to paragraph (2) and to Order 76, rule 2, a writ must be issued out of the Central Office

(4) Issue of a writ takes place upon its being sealed by an officer of the office out of which it is issued.

(5) A concurrent writ must be marked “concurrent” with an official seal and bear the date of issue.

(6) No writ shall be sealed unless at the time of the tender thereof for sealing the person tendering it leaves at the office at which it is tendered a copy thereof signed, where the plaintiff sues in person, by him or, where he does not so sue, by or on behalf of his solicitor.

[E.r. 7]

Duration and renewal of writ

7.—(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for 12 months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding 12 months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.

(3) Before a writ, the validity of which has been extended under this rule, is served, it must be sealed with a seal showing the period for which the validity of the writ has been so extended.

(4) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served so as to extend the validity of that other writ until the expiration of the period specified in the order.

[E.r. 8]

ORDER 7

ORIGINATING SUMMONSES : GENERAL PROVISIONS

Application

1. The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these Rules or by or under any statutory provision.

[E.r. 1]

Form of summons, etc.

2.—(1) Every originating summons must be in Form No. 6, 7, 8 or 9 in Appendix A, whichever is appropriate.

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(2) The party taking out an originating summons (other than a summons under Order 90 or an ex parte summons) shall be described as a plaintiff, and the other parties shall be described as defendants.

[E.r. 2]

Contents of summons

3.—(1) Every originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the High Court or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that relief or remedy.

(2) Order 6, rules 3 and 4, shall apply in relation to an originating summons as they apply in relation to a writ.

[E.r. 3]

Concurrent summons

4. Order 6, rule 5, shall apply in relation to an originating summons as it applies in relation to a writ.

[E.r. 4]

Issue of summons

5. Order 6, rule 6, shall apply in relation to an originating summons as it applies in relation to a writ.

[E.r. 5]

Duration and renewal of summons

6. Order 6, rule 7, shall apply in relation to an originating summons as it applies in relation to a writ.

[E.r. 6]

Ex parte originating summons

7.—(1) Rules 2(1), 3(1) and 5 shall, so far as applicable, apply to ex parte originating summonses; but, save as aforesaid, the foregoing rules of this Order shall not apply to ex parte originating summonses.

(2) Order 6, rule 6(2), (3), (4) and (6) shall, with the necessary modifications, apply in relation to an ex parte originating summons as they apply in relation to a writ.

[E.r. 7]

ORDER 8

ORIGINATING AND OTHER MOTIONS : GENERAL PROVISIONS

Application

1. The provisions of this Order apply to all motions subject, in the case of originating motions of any particular class, to any special provisions relating to motions of that class made by these Rules or by or under any statutory provision.

[E.r. 1]

Notice of motion

2.—(1) Except where an application by motion may properly be made *ex parte*, no motion shall be made without previous notice to the parties affected thereby, but the Court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief may make an order *ex parte* on such terms as to costs or otherwise, and subject to such undertaking, if any, as it thinks just; and any party affected by such order may apply to the Court to set it aside.

(2) Unless the Court gives leave to the contrary, there must be at least 2 clear days between the service of notice of a motion and the day named in the notice for hearing the motion.

[E.r. 2]

Form and issue of notice of motion

3.—(1) The notice of an originating motion must be in Form No. 11 in Appendix A and the notice of any other motion in Form No. 27 in that Appendix.

Where leave has been given under rule 2(2) to serve short notice of motion, that fact must be stated in the notice.

(2) The notice of a motion must include a concise statement of the nature of the claim made or the relief or remedy required.

(3) Order 6, rule 4, shall, with the necessary modifications, apply in relation to notice of an originating motion as it applies in relation to a writ.

(4) An originating motion, by which proceedings assigned to the Chancery Division are begun, must be issued out of the Chancery Office.

(5) Subject to paragraph (2), an originating motion must be issued out of the Central Office.

(6) Issue of every notice of motion takes place upon its being sealed by an officer of the office out of which it is issued.

[E.r. 3]

Service of notice of motion with writ, etc.

4. Notice of a motion to be made in an action may be served by the plaintiff on the defendant with the writ of summons or originating summons or at any time after service of such writ or summons, whether or not the defendant has entered an appearance in the action.

[E.r. 4]

Adjournment of hearing

5. The hearing of any motion may be adjourned from time to time on such terms, if any, as the Court thinks fit.

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[E.r. 5]

ORDER 9

PETITIONS : GENERAL PROVISIONS

Application

1. Rules 2 and 3 apply to petitions by which civil proceedings in the High Court are begun, subject, in the case of petitions of any particular class, to any special provisions relating to petitions of that class made by these Rules or by or under any statutory provision.

[E.r. 1]

Contents of petition

2.—(1) Every petition must include a concise statement of the nature of the claim made and the relief or remedy required in the proceedings begun thereby.

(2) Every petition must include at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served, a statement to that effect.

(3) Order 6, rule 4, shall, with the necessary modifications, apply in relation to a petition as it applies in relation to a writ.

[E.r. 2]

Presentation of petition

3. Save where otherwise expressly provided by these Rules a petition may be presented by lodging it in the Chancery Office.

[E.r. 3]

Time of service of petition

4. Unless the Court otherwise directs, a petition which is required to be served on any person must be served on him not less than 7 days before the day fixed for the hearing of the petition.

[E.r. 4]

Certain applications not to be made by petition

5. No application in any cause or matter may be made by petition.

[E.r. 5]

ORDER 10

SERVICE OF ORIGINATING PROCESS : GENERAL PROVISIONS

General provisions

1.—(1) A writ must be served personally on each defendant by the plaintiff.

(2) A writ for service on a defendant within the jurisdiction may instead of being served personally on him be served—

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- (a) by sending a copy of the writ by ordinary first-class post to the defendant at his usual or last known address or
- (b) if there is a letter box for that address by inserting through the letter box a copy of the writ enclosed in a sealed envelope addressed to the defendant.

In sub-paragraph (a) 'first-class post' means first-class post which has been pre-paid or in respect of which prepayment is not required.

- (3) Where a writ is served in accordance with paragraph (2)—
 - (a) the date of service shall unless the contrary is shown be deemed to be the seventh day (ignoring Order 3 rule 2(5)) after the date on which the copy was sent to or as the case may be inserted through the letter box for the address in question;
 - (b) any affidavit proving due service of the writ must contain a statement to the effect that—
 - (i) in the opinion of the deponent the copy of the writ if sent to or, as the case may be inserted through the letter box for, the address in question, will have come to the knowledge of the defendant within 7 days thereafter; and
 - (ii) in the case of service by post, the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee.

(4) Where a defendant's solicitor indorses on the writ a statement that he accepts service of the writ on behalf of that defendant, the writ shall be deemed to have been duly served on that defendant and to have been so served on the date on which the indorsement was made.

(5) Where a writ is not duly served on a defendant but he enters an unconditional appearance in the action begun by the writ, the writ shall be deemed to have been duly served on him and to have been so served on the date on which he entered the appearance.

(6) This rule shall have effect subject to the provisions of any statutory provision and these rules and in particular to any statutory provision which provides for the manner in which documents may be served on bodies corporate.

Service of writ on agent of oversea principal

- 2.—(1) Where the Court is satisfied on an ex parte application that—
 - (a) a contract has been entered into within the jurisdiction with or through an agent who is either an individual residing or carrying on business within the jurisdiction or a body corporate having a registered office or a place of business within the jurisdiction, and
 - (b) the principal for whom the agent was acting was at the time the contract was entered into and is at the time of the application neither such an individual nor such a body corporate, and
 - (c) at the time of the application either the agent's authority has not been determined or he is still in business relations with his principal;

the Court may authorise service of a writ beginning an action relating to the contract to be effected on the agent instead of the principal.

(2) An order under this rule authorising service of a writ on a defendant's agent must limit a time within which the defendant must enter an appearance.

(3) Where an order is made under this rule authorising service of a writ on a defendant's agent, a copy of the order and of the writ must be sent by post to the defendant at his address out of the jurisdiction.

[E.r. 2]

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Service of writ in pursuance of contract

3.—(1) Where—

- (a) a contract contains a term to the effect that the High Court shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the High Court has jurisdiction to hear and determine any such action, and
- (b) the contract provides that, in the event of any action in respect of the contract being begun, the process by which it is begun may be served on the defendant, or on such other person on his behalf as may be specified in the contract, in such manner, or at such place (whether within or out of the jurisdiction), as may be so specified,

then, if an action in respect of the contract is begun in the High Court and the writ by which it is begun is served in accordance with the contract, the writ shall, subject to paragraph (2), be deemed to have been duly served on the defendant.

(2) A writ which is served out of the jurisdiction in accordance with a contract shall not be deemed to have been duly served on the defendant by virtue of paragraph (1) unless leave to serve the writ, or notice thereof, out of the jurisdiction has been granted under Order 11, rule 1 or 2.

[E.r. 3]

Service of writ in actions for possession of land

4.—(1) Where a writ is indorsed with a claim for the possession of land, service of the writ may be effected either by personal service on the defendant at any place in Northern Ireland, or by delivering a copy of such writ at the defendant's residence or place of business to the wife or husband of the defendant, or to some relative of the defendant or of the husband or wife of the defendant or to an employee of the defendant (the person with whom such copy shall be left being apparently over the age of 16 years), and such service as last aforesaid may be effected whether the defendant is in Northern Ireland or not.

(2) Where a writ is indorsed with a claim for the possession of land, the Court may—

- (a) if satisfied on an ex parte application, that no person appears to be in possession of the land and that service cannot be otherwise effected on any defendant, authorise service on that defendant to be effected by affixing a copy of the writ to some conspicuous part of the land;
- (b) if satisfied on such an application that no person appears to be in possession of the land and that service could not otherwise have been effected on any defendant, order that service already effected by affixing a copy of the writ to some conspicuous part of the land shall be treated as good service on that defendant.

[E.r. 4]

Service of originating summons, petition and notice of motion

5. The foregoing rules of this Order shall apply in relation to an originating summons to which an appearance is required to be entered as they apply in relation to a writ, and rule 1(1), (2), (3) and (4) shall, with any necessary modifications, apply in relation to an originating summons to which no appearance need be entered, a notice of an originating motion and a petition as they apply in relation to a writ.

[E.r. 5]

ORDER 11

SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION

Principal cases in which service of writ out of jurisdiction is permissible

1.—(1) Subject to rule 3 and provided that the writ does not contain any such claim as is mentioned in Order 75, rule 2(1)(a), service of a writ, or notice of a writ, out of the jurisdiction is permissible with the leave of the Court in the following cases, that is to say—

- (a) if the whole subject-matter of the action begun by the writ is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;
- (b) if an act, deed, will, contract, obligation or liability affecting land situate within the jurisdiction is sought to be construed, rectified, set aside or enforced in the action begun by the writ;
- (c) if in the action begun by the writ relief is sought against a person domiciled or ordinarily resident within the jurisdiction;
- (d) if the action begun by the writ is for the administration of the estate of a person who died domiciled within the jurisdiction or if the action begun by the writ is for any relief or remedy which might be obtained in any such action as aforesaid;
- (e) if the action begun by the writ is for the execution, as to property situate within the jurisdiction, of the trusts of a written instrument, being trusts that ought to be executed according to the law of Northern Ireland and of which the person to be served with the writ is a trustee or if the action begun by the writ is for any relief or remedy which might be obtained in any such action as aforesaid;
- (f) if the action begun by the writ is brought against a defendant not domiciled or ordinarily resident in Scotland to enforce, rescind, dissolve, annul or otherwise affect a contract or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which—
 - (i) was made within the jurisdiction, or
 - (ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction, or
 - (iii) is by its terms, or by implication, governed by the law of Northern Ireland,
- (g) if the action begun by the writ is brought against a defendant not domiciled or ordinarily resident in England and Wales or Scotland in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;
- (h) if the action begun by the writ is founded on a tort committed within the jurisdiction;
- (i) if in the action begun by the writ an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing),
- (j) if the action begun by the writ being properly brought against a person duly served within the jurisdiction, a person out of the jurisdiction is a necessary or proper party thereto;
- (k) if the action begun by the writ is either by a mortgagee of property situate within the jurisdiction (other than land) and seeks the sale of the property, the foreclosure of the mortgage or delivery by the mortgagor of possession of the property but not an order for

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payment of any moneys due under the mortgage or by a mortgagor of property so situate (other than land) and seeks redemption of the mortgage, reconveyance of the property or delivery by the mortgagee, of possession of the property but not a personal judgment;

- (l) if the action begun by the writ is brought under the Carriage by Air Act 1961(2), the Carriage by Air (Supplementary Provisions) Act 1962(3), the Carriage of Goods by Road Act 1965(4), the Nuclear Installations Act 1965(5) or the Protection of Trading Interests Act 1980(6);
- (m) action begun by the writ is a probate action within the meaning of Order 76;
- (n) if the action brought by the writ is brought to enforce a claim in respect of a liability incurred under the Merchant Shipping (Oil Pollution) Act 1971(7);
- (o) if the action begun by the writ is brought against a defendant not domiciled or ordinarily resident in England and Wales or Scotland in respect of a claim by the Commissioners of Inland Revenue for estate duty or capital transfer tax;
- (p) if the action begun by the writ is one in which a claim is made for a sum to which the directive of the Council of the European Communities dated 15th March 1976 No. 76/308/EEC applies, and service is to be effected in a country which is a member state of the European Economic Community.

In this paragraph “mortgage” includes a charge or lien, “mortgagee” means a person entitled to, or interested in, a mortgage and “mortgagor” means a person entitled to, or interested in property subject to a mortgage.

(2) Service of a writ in England and Wales, Scotland, the Isle of Man or the Channel Islands and service of notice of a writ in any other place out of the jurisdiction, is permissible without the leave of the Court if every claim made in the action begun by the writ is one which by virtue of a statutory provision the High Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction.

(3) Where a writ or notice of a writ is to be served out of the jurisdiction under paragraph (2), the time to be inserted in the writ or notice within which the defendant served therewith must enter an appearance shall be limited in accordance with the practice adopted under rule 4(4).

[E.r. 1]

Service out of jurisdiction in certain actions of contract

2. Where it appears to the Court that a contract contains a term to the effect that the High Court shall have jurisdiction to hear and determine any action in respect of the contract, the Court may, subject to rule 3, grant leave for service out of the jurisdiction of the writ, or notice of the writ, by which an action in respect of the contract is begun.

[E.r. 2]

Leave for service of notice of writ

3.—(1) Unless service is to be effected in England and Wales, Scotland, the Isle of Man or the Channel Islands, leave granted under rule 1 or 2 shall be leave for service out of the jurisdiction of notice of the writ and not the writ.

(2) 1961 c. 27
 (3) 1962 c. 43
 (4) 1965 c. 37
 (5) 1965 c. 57
 (6) 1980 c. 11
 (7) 1971 c. 59

(2) Notice of a writ for service out of the jurisdiction must be in Form No. 5 in Appendix A.

[E.r. 3]

Application for, and grant of, leave to serve writ out of jurisdiction

4.—(1) An application for the grant of leave under rule 1 or 2 must be supported by an affidavit stating the grounds on which the application is made and that, it) the deponent's belief, the plaintiff has a good cause of action, and showing in what place or country the defendant is, or probably may be found.

(2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.

(3) Where the application is for the grant of leave under rule 1 to serve a writ in England and Wales or Scotland, if it appears to the Court that there may be a concurrent remedy there, the Court, in deciding whether to grant leave, shall have regard to the comparative cost and convenience of proceeding there or in Northern Ireland, and (where that is relevant) to the powers and jurisdiction of the county courts in England and Wales or of the sheriff's or small debts courts in Scotland.

(4) An order granting under rule 1 or 2 leave to serve a writ, or notice of a writ, out of the jurisdiction must limit a time within which the defendant to be served must enter an appearance.

[E.r. 4]

Service of writ or notice of writ abroad: general

5.—(1) Subject to the following provisions of this rule, Order 10 rule 1(1), (4) and (S) and Order 65 rule 4, shall apply in relation to the service of a writ, or notice of a writ, notwithstanding that the writ or notice is to be served out of the jurisdiction.

(2) Nothing in this rule or in any order or direction of the Court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.

(3) A writ, or notice of a writ, which is to be served out of the jurisdiction—

- (a) need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected; and
- (b) need not be served by the plaintiff or his agent if it is served by a method provided for by rule 6 or rule 7.

(4) An official certificate stating that a notice of a writ as regards which rule 6 has been complied with, has been served on a person personally, or in accordance with the law of the country in which service was effected, on a specified date, being a certificate—

- (a) by a British consular authority in that country, or
- (b) by the government or judicial authorities of that country, or
- (c) by any other authority designated in respect of that country under the Hague Convention,

shall be evidence of the facts so stated.

(5) An official certificate by the Secretary of State stating that notice of a writ has been duly served on a specified date in accordance with a request made under rule 7 shall be evidence of that fact.

(6) A document purporting to be such a certificate as is mentioned in paragraph (5) or (6) shall, until the contrary is proved, be deemed to be such a certificate.

(7) In this rule and rule 6 “the Hague Convention” means the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at The Hague on 15th November 1965.

[E.r. 5]

Service of notice of writ abroad through foreign governments, judicial authorities and British consuls

6.—(1) This rule does not apply to service in—

- (a) England and Wales, Scotland, the Isle of Man or the Channel Islands;
- (b) any independent Commonwealth country;
- (c) any colony or protectorate;
- (d) the Republic of Ireland.

(2) Where in accordance with these Rules notice of a writ is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention (other than the Hague Convention) providing for service in that country of process of the High Court, the notice may be served—

- (a) through the judicial authorities of that country; or
- (b) through a British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served).

(3) Where in accordance with these Rules, notice of a writ is to be served on a defendant in any country which is a party to the Hague Convention, the notice may be served—

- (a) through the authority designated under the Convention in respect of that country; or
- (b) if the law of that country permits—
 - (i) through the judicial authorities of that country, or
 - (ii) through a British consular authority in that country.

(4) Where in accordance with these Rules notice of a writ is to be served on a defendant in any country with respect to which there does not subsist a Civil Procedure Convention providing for service in that country of process of the High Court, the notice may be served—

- (a) through the government of that country, where that government is willing to effect service; or
- (b) through a British consular authority in that country, except where service through such an authority is contrary to the law of that country.

(5) A person who wishes to serve notice of a writ by a method specified in paragraph (2), (3) or (4) must lodge in the Central Office a request for service of notice of the writ by that method, together with a copy of the notice and an additional copy thereof for each person to be served.

(6) Every copy of a notice lodged under paragraph (5) must be accompanied by a translation of the notice in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected.

Provided that this paragraph shall not apply in relation to a copy of a notice which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a British consular authority on a British subject, unless the service is to be effected under paragraph (2) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.

(7) Every translation lodged under paragraph (6) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.

(8) Documents duly lodged under paragraph (5) shall be sent by the Master (Queen's Bench and Appeals) to the Parliamentary Under-Secretary of State to the Foreign Office with a request that he arrange for notice of the writ to be served by the method indicated in the request lodged under paragraph (5), or, where alternative methods are so indicated, by such one of those methods as is most convenient.

[E.r. 6]

Service of notice of writ in certain actions under certain Acts

7.—(1) Where a person to whom leave has been granted under rule 1 to serve notice of a writ on a High Contracting Party to the convention set out in Schedule I to the Carriage by Air Act 1961, the Schedule to the Carriage by Air (Supplementary Provisions) Act 1962 or the Schedule to the Carriage of Goods by Road Act 1965, being a writ beginning an action to enforce a claim in respect of carriage undertaken by that Party, wishes to have the notice served on that Party, he must lodge in the Central Office—

- (a) a request for service to be arranged by the Secretary of State; and
- (b) a copy of the notice; and
- (c) except where the official language of the High Contracting Party is, or the official languages of that Party include, English, a translation of the notice in the official language or one of the official languages of the High Contracting Party.

(2) Where a person to whom leave has been granted under rule 1 to serve notice of a writ on the government of a country outside the United Kingdom, being a writ beginning an action to enforce a claim by virtue of section 10 of the Nuclear Installations Act 1965, wishes to have the notice served on that government, he must lodge in the Central Office the documents mentioned in sub-paragraphs (a), (b) and (c) of paragraph (1), and those sub-paragraphs shall apply accordingly with the substitution for references to the High Contracting Party of references to the country in question.

(3) Rule 6(7) shall apply in relation to a translation lodged under paragraphs (1) or (2) of this rule as it applies in relation to a translation lodged under paragraph (6) of that rule.

(4) Documents duly lodged under this rule shall be sent by the Master (Queen's Bench and Appeals) to the Secretary of State with a request that the Secretary of State arrange for the notice to be served on the High Contracting Party or the government in question, as the case may be.

[E.r. 7]

Undertaking to pay expenses of service by Secretary of State

8. Every request lodged under rule 6(5) or rule 7 must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Secretary of State in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Finance Officer of the office of the Secretary of State and to produce a receipt for the payment to the proper officer of the High Court.

[E.r. 8]

Service of originating summons, petition, notice of motion, etc.

9.—(1) Subject to paragraph (2) and to Order 73, rule 5, service out of the jurisdiction of an originating summons is permissible with the leave of the Court.

(2) Where the proceedings begun by an originating summons might have been begun by writ, service out of the jurisdiction of the originating summons is permissible as aforesaid if, but only if, service of the writ, or notice of the writ, out of the jurisdiction would be permissible had the proceedings been begun by writ.

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(3) Where any proceedings are authorised by these Rules or (apart from these Rules) by or under any statutory provision to be begun by originating motion or petition, service out of the jurisdiction of the notice of motion or of the petition is permissible with the leave of the Court.

(4) Subject to Order 73, rule 5, service out of the jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court.

(5) Rule 4(1), (2) and (3) shall, so far as applicable, apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1 or 2.

(6) An order granting under this rule leave to serve out of the jurisdiction an originating summons to which an appearance is required to be entered must limit a time within which the defendant to be served with the summons must enter an appearance.

(7) Rules 5, 6 and 8 shall apply in relation to any document for the service of which out of the jurisdiction leave has been granted under this rule as they apply in relation to notice of a writ.

[E.r. 9]

ORDER 12

ENTRY OF APPEARANCE TO WRIT OR ORIGINATING SUMMONS

Mode of entering appearance

1.—(1) Subject to paragraph (2) and to Order 80, rule 2, a defendant to an action begun by writ may (whether or not he is sued as a trustee or personal representative or in any other representative capacity) enter an appearance in the action and defend it by a solicitor or in person.

(2) Except as expressly provided by any statutory provision, a defendant to such an action who is a body corporate may not enter an appearance in the action or defend it otherwise than by a solicitor.

(3) An appearance is entered by properly completing the requisite documents, that is to say, a memorandum of appearance, as defined by rule 3, two copies thereof, and handing them in at, or sending them by post to, the appropriate office.

(4) If two or more defendants to an action enter an appearance by the same solicitor and at the same time, only one set of the requisite documents need be completed and delivered for those defendants.

[E.r. 1]

Place for entering appearance

2. An appearance must be entered in the appropriate office.

[E.r. 2]

Memorandum of appearance

3.—(1) A memorandum of appearance is a request to the appropriate office to enter an appearance for the defendant or defendants specified in the memorandum.

(2) A memorandum of appearance must be in Form No. 12 in Appendix A and the memorandum of appearance and copies thereof required for entering an appearance must be signed by the solicitor by whom the defendant appears or, if the defendant appears in person, by the defendant.

(3) A memorandum of appearance must specify—

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- (a) in the case of a defendant appearing in person, the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent; and
- (b) in the case of a defendant appearing by a solicitor, a business address of his solicitor's within the jurisdiction,

and where the defendant enters an appearance in person, the address within the jurisdiction specified under sub-paragraph (a) shall be his, address for service, but otherwise his solicitor's business address shall be his address for service.

(4) If the Court is satisfied on application by the plaintiff that any address specified in the memorandum of appearance is not genuine, the Court may set aside the appearance.

[E.r. 3]

Procedure on receipt of requisite documents

4.—(1) On receiving the requisite documents an officer of the appropriate office must in all cases affix to the memorandum of appearance, and 2 copies thereof, an official stamp showing the date on which he received those documents, enter the appearance in the cause book, file the original memorandum and—

- (a) if the requisite documents were handed in at the office, hand back 2 copies of the memorandum, and
- (b) if they were sent by post, send 1 copy by post to the plaintiff, or as the case may be, his solicitor at the plaintiff's address for service and also send by post to the defendant or, as the case may be, his solicitor at the defendant's address for service the other copy of the memorandum.

(2) Where the defendant enters an appearance by handing in the requisite documents at the office, he must on the date on which he enters the appearance send by post to the plaintiff, if the plaintiff sues in person, but otherwise to the plaintiff's solicitor, at the plaintiff's address for service, one of the copies of the memorandum of appearance, handed back to him under paragraph (1).

[E.r. 4]

Time limited for appearing

5. Reference in these Rules to the time limited for appearing are references—

- (a) in the case of a writ served within the jurisdiction, to 14 days after service of the writ (including the day of service) or, where that time has been extended by or by virtue of these Rules, to that time as so extended; and
- (b) in the case of a writ, or notice of a writ, served out of the jurisdiction, to the time limited under Order 10, rule 2(2), Order 11, rule 1(3), or Order 11, rule 4(4), or, where that time has been extended as aforesaid, to that time as so extended.

[E.r. 5]

Late appearance

6.—(1) A defendant may not enter an appearance in an action after judgment has been entered therein except with the leave of the Court.

(2) Except as provided by paragraph (1), nothing in these Rules or any writ or order thereunder shall be construed as precluding a defendant from entering an appearance in an action after the time limited for appearing, but if a defendant enters an appearance after that time, he shall not, unless

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the Court otherwise orders, be entitled to serve a defence or do any other thing later than if he had appeared within that time.

[E.r. 6]

Conditional appearance

7.—(1) A defendant to an action may with the leave of the Court enter a conditional appearance in the action.

(2) A conditional appearance, except by a person sued as a partner of a firm in the name of that firm and served as a partner, is to be treated for all purposes as an unconditional appearance unless the Court otherwise orders or the defendant applies to the Court, within the time limited for the purpose, for an order under rule 8, and the Court makes an order thereunder.

[E.r. 7]

Application to set aside writ, etc.

8. A defendant to an action may at any time before entering an appearance therein, or, if he has entered a conditional appearance, within 14 days after entering the appearance, apply by summons or motion for an order setting aside the writ or service of the writ, or notice of the writ, on him, or declaring that the writ or notice has not been duly served on him or discharging any order giving leave to serve the writ or notice on him out of the jurisdiction.

[E.r. 8]

Appearance to originating summons

9.—(1) Subject to paragraph (2), an appearance must be entered to every originating summons (other than an ex parte originating summons) by each defendant named in and served with the summons.

(2) No appearance need be entered to an originating summons in any case or class of case in relation to which special provision to that effect is made by these Rules or by or under any statutory provision.

(3) Subject to the foregoing provisions of this rule, the foregoing rules of this Order shall apply in relation to an originating summons to which an appearance is required to be entered as they apply in relation to a writ except that for the reference in rule S(b) to Order 11, rules 1(3) and 4(4), there shall be substituted a reference to Order 11, rule 9(6).

[E.r. 9]

ORDER 13

DEFAULT OF APPEARANCE TO WRIT

Claim for liquidated demand

1.—(1) Where a writ is indorsed with a claim against a defendant for a liquidated demand only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.

(2) A claim shall not be prevented from being treated for the purposes of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest accruing after the date of the

writ, at an unspecified rate, but any such interest shall be computed from the date of the writ to the date of entering judgment at the rate of 5 per cent.

(3) Before final judgment is entered under this rule an affidavit must be filed specifying the amount then actually due to the plaintiff.

[E.r. 1]

Claim for unliquidated damages

2. Where a writ is indorsed with a claim against a defendant for unliquidated damages only, then; if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

[E.r. 2]

Claim for detention of goods

3.—(1) Where a writ is indorsed with a claim against a defendant relating to the detention of goods only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing and subject to Order 42, rule 6—

(a) at his option enter either—

(i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs, or

(ii) interlocutory judgment for the value of the goods to be assessed and costs, or

(b) apply by summons for judgment against that defendant for delivery of the goods without giving, him the alternative of paying their assessed value,

and in, any case proceed with the action against the other defendants, if any.

(2) A summons under paragraph (1)(b) must be supported by affidavit and notwithstanding Order 65, rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

[E.r. 3]

Claim for possession of land

4.—(1) Where a writ is indorsed with a claim against a defendant for possession of land only, then, subject to paragraphs (2), (3) and (4), if that defendant fails to enter an appearance the plaintiff may, after the time limited for appearing, and on producing a certificate by his solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 88 rule 1, enter judgment for possession of the land as against that defendant and costs, and proceed with the action against the other defendants, if any.

(2) The plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under this rule unless he produces a certificate by his solicitor, or (if he sues in person) an affidavit, stating that the claim does not relate to a dwelling-house.

(3) The plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under this rule where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent unless he produces a certificate by his solicitor, or (if he sues in person) an affidavit, stating that the land does not comprise or include a holding agricultural or pastoral or partly agricultural and partly pastoral.

(4) The plaintiff shall not be entitled to enter judgment under this rule where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent unless he files an

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affidavit made by the landlord, his agent, receiver or clerk, stating that there was at the date of issue of the writ at least one year's rent due over and above all just and fair allowances.

(5) An application for leave to enter judgment under paragraph (2) or (3) shall be by summons stating the grounds of the application, and the summons must, unless the Court otherwise orders and notwithstanding anything in Order 65, rule 9, be served on the defendant against whom it is sought to enter judgment.

(6) If the Court refuses leave to enter judgment, it may make or give any such order or directions as it might have made or given had the application been an application for judgment under Order 14, rule 1.

(7) Where there is more than one defendant, any judgment entered under this rule shall contain a stay of enforcement against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

(8) Where the plaintiff is a superior landlord and he applies under paragraph (3) for leave to enter judgment against a defendant who is an immediate landlord the Court may, having regard to the provisions of section 12 of the Land Law (Ireland) Act 1896⁽⁸⁾:—

- (a) give such directions as to notice to tenants and otherwise and grant leave subject to such limitations as to enforcement of the judgment and such provisions as to costs as it thinks just:
- (b) on proof by affidavit that the non-payment of rent by the defendant is due to the non-payment of rent by the tenant of the holding, issue a certificate to that effect.

[E.r. 4]

Mixed claims

5. Where a writ issued against any defendant is indorsed with two or more of the claims mentioned in the foregoing rules, and no other claim, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim indorsed on the writ, and proceed with the action against the other defendants, if any.

[E.r. 5]

Other claims

6.—(1) Where a writ is indorsed with a claim of a description not mentioned in rules 1 to 4, then, if any defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing and upon filing an affidavit proving due service of the writ on that defendant and, where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, proceed with the action as if that defendant had entered an appearance.

(2) Where a writ issued against a defendant is indorsed as aforesaid, but by reason of the defendant's satisfying the claim or complying with the demands thereof or any other like reason it has become unnecessary for the plaintiff to proceed with the action, then, if the defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter judgment with the leave of the Court against that defendant for costs.

(3) An application for leave to enter judgment under paragraph (2) shall be by summons which must, unless the Court otherwise orders, and notwithstanding anything in Order 65, rule 9 be served on the defendant against whom it is sought to enter judgment.

[E.r. 6]

(8) 1896 c. 47

Proof of service of writ

7.—(1) Judgment shall not be entered against a defendant under this Order unless—

- (a) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ or notice of the writ on the defendant; or
- (b) the plaintiff produces the writ indorsed by the defendant's solicitor with a statement that he accepts service of the writ on the defendant's behalf.

(2) Where, in an action begun by a writ, an application is made to the Court for an order affecting a party who has failed to enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

(3) Where, after judgment has been entered under this Order against a defendant purporting to have been served by post under Order 10, rule 1(2)(a), the copy of the writ sent to the defendant is returned to the plaintiff through the post undelivered to the addressee, the plaintiff shall, before taking any step or further step in the action or the enforcement of the judgment, either—

- (a) make a request for the judgment to be set aside on the ground that the writ has not been duly served, or
- (b) apply to the Court for directions.

(4) A request under paragraph (3)(a) shall be made by producing to an officer of the office in which the judgment was entered, and leaving with him for filing, an affidavit stating the relevant facts, and thereupon the judgment shall be set aside and the entry of the judgment and of any proceedings for its enforcement made in the book kept in the office for that purpose shall be marked accordingly.

(5) An application under paragraph (3)(b) shall be made *ex parte* by affidavit stating the facts on which the application is founded and any order or direction sought, and on, the application the Court may—

- (a) set aside the judgment; or
- (b) direct that, notwithstanding the return of the copy of the writ, it shall be treated as having been duly served, or
- (c) make such other order and give such other direction as the circumstances may require.

[E.r. 7]

Setting aside judgment

8. Without prejudice to rule 7(3) and (4), the Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

[E.r. 9]

ORDER 14

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 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 for judgment against that defendant.

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(2) Subject to paragraph (3), this rule applies to every action begun by writ in the Queen's Bench Division or the Chancery Division other than—

- (a) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment,
- (b) an action which includes a claim by the plaintiff based on an allegation of fraud, or
- (c) an Admiralty action in rem.

(3) This Order shall not apply to an action to which Order 86 applies.

[E.r. 1]

Manner in which application under rule 1 must be made

2.—(1) An application under rule 1 must be made by summons supported by an affidavit verifying 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) Where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent the affidavit filed under paragraph (1) must state whether or not the land comprises or includes a holding agricultural or pastoral or partly agricultural and partly pastoral.

(3) Unless the Court otherwise directs, an affidavit for the purpose of this rule may contain, statements of information or belief with the sources and grounds thereof.

(4) The summons, a copy of the affidavit in support and of any exhibits referred to therein must be served on the defendant not less than 10 clear days before the return day.

[E.r. 2]

Judgment for plaintiff

3.—(1) Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court 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 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 may by order, and subject to such conditions, if any, as may be just, stay enforcement 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.

(3) Where the plaintiff is a superior landlord and he applies under rule 1 for judgment for possession of land for non-payment of the rent of land which comprises or includes a holding agricultural or pastoral or partly agricultural and partly pastoral, the Court may, having regard to the provisions of section 12 of the Land Law (Ireland) Act 1896⁽⁹⁾,—

- (a) give such directions as to notice to tenants and otherwise and give judgment subject to such limitations as to enforcement of the judgment and such provisions as to costs as it thinks just;
- (b) on proof by affidavit that the non-payment of rent by the defendant is due to the non-payment of rent by the tenant of the holding, issue a certificate to that effect.

[E.r. 3]

(9) 1896 c. 47

Leave to defend

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

(2) Rule 2(3) applies for the purposes of this rule as it applies for the purposes of that rule.

(3) The Court 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 the Act may be tried without a jury) or otherwise as it thinks fit.

(4) On the hearing of such an application the Court 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 that, there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

[E.r. 4]

Application for summary judgment on counterclaim

5.—(1) Where a defendant to an action in the Queen's Bench Division or Chancery Division begun by writ has served a counterclaim on the plaintiff, then, subject to paragraph (3), 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 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) This rule shall not apply to a counterclaim which includes any such claim as is referred to in rule 1(2).

[E.r. 5]

Directions

6.—(1) Where the Court—

- (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 a 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 enforcement of the judgment be stayed pending the trial of a counterclaim or of the action, as the case may be,

the Court shall give directions as to the further conduct of the action.

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(2) In particular, and if the parties consent, the Court may direct that the claim in question and any other claim in the action be tried by a master under the provisions of these Rules relating to the trial of causes or matters or questions or issues by masters.

[E.r. 6]

Costs

7.—(1) If the plaintiff makes an application under rule 1 where the case is not within this Order or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 62, and, in particular, to rule 4(1) thereof, the Court may dismiss the application with costs and may, if the plaintiff is not an assisted person, require the costs to be paid by him forthwith.

(2) The Court shall have the same power to dismiss an application under rule 5 as it has under paragraph (1) to dismiss an application under rule 1, and that paragraph shall apply accordingly with the necessary modifications.

[E.r. 7]

Right to proceed with residue of action or counterclaim

8.—(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 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 as respects any other claim or as respects the remainder of the claim or against any other defendant to the counterclaim.

[E.r. 8]

Judgment for delivery up of chattel

9. 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 gives judgment under this Order for the applicant, it 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.

[E.r. 9]

Relief against forfeiture

10. A tenant shall have the same right to apply for relief after judgment for possession of land on the ground of forfeiture for non-payment of rent has been given under this Order as if the judgment had been given after trial.

[E.r. 10]

Setting aside judgment

11. 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 on such terms as it thinks just.

[E.r. 11]

ORDER 15

CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES

Joinder of causes of action

1.—(1) Subject to rule 5(1), a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action—

- (a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action, or
- (b) if the plaintiff claims or the defendant is alleged to be liable in the capacity of executor or administrator of an estate in respect of one or more of the causes of action and in his personal capacity but with reference to the same estate in respect of all the others, or
- (c) with the leave of the Court.

(2) An application for leave under this rule must be made ex parte by affidavit before the issue of the writ or originating summons, as the case may be, and the affidavit must state the grounds of the application.

[E.r. 1]

Counterclaim against plaintiff

2.—(1) Subject to rule 5(2), a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter; and where he does so he must add the counterclaim to his defence.

(2) Rule 1 shall apply in relation to a counterclaim as if the counterclaim were a separate action and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

(3) A counterclaim may be proceeded with notwithstanding that judgment is given for the plaintiff in the action or that the action is stayed, discontinued or dismissed.

(4) Where a defendant establishes a counterclaim against the claim of the plaintiff and there is a balance in favour of one of the parties, the Court may give judgment for the balance, so, however, that this provision shall not be taken as affecting the Court's discretion with respect to costs.

[E.r. 2]

Counterclaim against additional parties

3.—(1) Where a defendant to an action who makes a counterclaim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along with the plaintiff in respect of the subject-matter of the counterclaim; or claims against such other person any relief relating to or connected with the original subject-matter of the action, then, subject to rule 5(2), he may join that other person as a party against whom the counterclaim is made.

(2) Where a defendant joins a person as a party against whom he makes a counterclaim, he must add that person's name to the title of the action and serve on him a copy of the counterclaim; and a person on whom a copy of a counterclaim is served under this paragraph shall, if he is not already a party to the action, become a party to it as from the time of service with the same rights in respect of his defence to the counterclaim and otherwise as if he had been duly sued in the ordinary way by the party making the counterclaim.

(3) A defendant who is required by paragraph (2) to serve a copy of the counterclaim made by him on any person who before service is already a party to the action must do so within the period

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within which, by virtue of Order 18, rule 2, he must serve on the plaintiff the defence to which the counterclaim is added.

(4) An appearance to a counterclaim by a person who is not already a party to the action must be entered in the appropriate office. A memorandum of appearance to a counterclaim shall be in Form No. 15 in Appendix A.

(5) Where by virtue of paragraph.(2) a copy of a counterclaim is required to be served on a person who is not already a party to the action, the following provisions of these Rules, namely, Order 10, Order 11 (except rule 3), Orders 12 and 13 and Order 75, rule 4, shall, subject to the last foregoing paragraph, apply in relation to the counterclaim and the proceedings arising from it as if—

- (a) the counterclaim were a writ and the proceedings arising from it an action; and
- (b) the party making the counterclaim were a plaintiff and the party against whom it is made a defendant in that action.

(6) A copy of a counterclaim required to be served on a person who is not already a party to the action must be indorsed with a notice, in Form No. 14 in Appendix A, addressed to that person—

- (a) stating the effect of Order 12, rule 1, as applied by paragraph (5),
- (b) specifying the appropriate office for the entry of appearance by that person to the counterclaim, and
- (c) stating that he may obtain forms of the requisite documents from the appropriate office and explaining how he may do so.

[E.r. 3]

Joinder of parties

4.—(1) Subject to rule 5(1), two or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where—

- (a) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions, and
- (b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transactions or series of transactions.

(2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any statutory provision and unless the Court gives leave to the contrary, be parties to the action and any of them who does not consent to being joined as a plaintiff must, subject to any order made by the Court on an application for leave under this paragraph, be made a defendant.

This paragraph shall not apply to a probate action.

[E.r. 4]

Court may order separate trials, etc.

5.—(1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if two or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of the causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

(2) If it appears on the application of any party against whom a counterclaim is made that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

[E.r. 5]

Misjoinder and nonjoinder of parties

6.—(1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder or any party; and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the person's who are parties to the cause or matter.

(2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application—

- (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
- (b) order any of the following persons to be added as a party, namely—
 - (i) any person who ought to, have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
 - (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter,

but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.

(3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter.

[E.r. 6]

Change of parties by reason of death, etc.

7.—(1) Where a party to an action dies or becomes bankrupt but the cause of action survives, the action shall not abate by reason of the death or bankruptcy.

(2) Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first mentioned party.

An application for an order under this paragraph may be made ex parte.

(3) An order may be made under this rule for a person to be made a party to a cause or matter notwithstanding that he is already a party to it on the other side of the record, or on the same side but in a different capacity; but—

- (a) if he is already a party on the other side, the order shall be treated as containing a direction that he shall cease to be a party on that other side, and
- (b) if he is already a party on the same side but in another capacity, the order may contain a direction that he shall cease to be a party in that other capacity.

(4) The person on whose application an order is made under this rule must procure the order to be noted in the cause book, and after the order has been so noted that person must, unless the

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Court otherwise directs, serve the order on every other person who is a party to the cause or matter or who becomes or ceases to be a party by virtue of the order and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun.

(5) Any application to the Court by a person served with an order made ex parte under this rule for the discharge or variation of the order must be made within 14 days after the service of the order on that person.

[E.r. 7]

Provisions consequential on making of order under rule 6 or 7

8.—(1) Where an order is made under rule 6, the writ by which the action in question was begun must be amended accordingly and must be endorsed with—

- (a) a reference to the order in pursuance of which the amendment is made, and
- (b) the date on which the amendment is made,

and the amendment must be made within such period as may be specified in the order or, if no period is so specified, within 14 days after the making of the order.

(2) Where by an order under rule 6 a person is to be made a defendant, the rules as to service of a writ of summons shall apply accordingly to service of the amended writ on him, but before serving the writ on him the person on whose application the order was made must procure the order to be noted in the cause book.

(3) Where by an order under rule 6 or 7 a person is to be made a defendant, the rules as to entry of appearance shall apply accordingly to entry of appearance by him, subject, in the case of a person to be made a defendant by an order under rule 7, to the modification that the time limited for appearing shall begin with the date on which the order is served on him under rule 7(4) or, if the order is not required to be served on him, with the date on which the order is noted in the cause book.

(4) Where by an order under rule 6 or 7 a person is to be added as a party or is to be made a party in substitution for some other party, that person shall not become a party until—

- (a) where the order is made under rule 6, the writ has been amended in relation to him under this rule and (if he is a defendant) has been served on him, or
- (b) where the order is made under rule 7, the order has been served, on him under rule 7(4) or, if the order is not required to be served on him, the order has been noted in the cause book,

and where by virtue of the foregoing provisions a person becomes a party in substitution for some other party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the old, except that entry of appearance by the old party shall not dispense with entry of appearance by the new.

(5) The foregoing provisions of this rule shall apply in relation to an action begun by originating summons as they apply in relation to an action begun by writ.

[E.r. 8]

Failure to proceed after death of party

9.—(1) If after the death, of a plaintiff or defendant in any action the cause of action survives; but no order under rule 7 is made substituting as plaintiff any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court for an order that unless the action is proceeded with within such time as may be specified in the order the action shall be struck out as against the plaintiff or defendant, as the case may be, who has died; but where it is the plaintiff who has died, the Court shall not make an order under this rule unless satisfied that due notice of

the application has been given to the personal representatives (if any) of the deceased plaintiff and to any other interested person who, in the opinion of the Court, should be notified.

(2) Where in any, action a counterclaim is made by a defendant, this rule shall apply in relation to the counterclaim as if the counterclaim were a separate action and as if the defendant making the counterclaim were the plaintiff and the person against whom it is made a defendant.

[E.r. 9]

Actions for possession of land

10.—(1) Without prejudice to rule 6, the Court may at any stage of the proceedings in an action for possession of land order any person not a party to the action who is in possession of the land (whether in actual possession or by a tenant) to be added as a defendant.

(2) An application by any person for an order under this rule may be made ex parte, supported by an affidavit showing that he is in possession of the land in question and if by a tenant, naming him.

(3) A person added as a defendant by an order under this rule must serve a copy of the order on the plaintiff and must enter an appearance in the action within such period, if any, as may be specified in the order or, if no period is so specified, within 7 days after the making of the order, and the rules as to entry of appearance shall apply accordingly to entry of appearance by him.

[E.r. 10]

Relator actions

11. Before the name of any person is used in any action as a relator, that person must give a written authorisation so to use his name to his solicitor and the authorisation must be filed in the office out of which it is intended to issue the proceedings.

[E.r. 11]

Representative proceedings

12.—(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13, the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

(2) At any stage of proceedings under this rule the Court may, on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint one or more of the defendants or other persons as representing whom the defendants are sued to represent all, or all except one or more, of those persons in the proceedings; and where, in exercise of the power conferred by this paragraph, the Court appoints a person not named as a defendant, it shall make an order under rule 6 adding that person as a defendant.

(3) A judgment or order given in proceedings under this rule shall be binding on all the persons as representing whom the plaintiffs sue or, as the case may be, the defendants are sued, but shall not be enforced against any person not a party to the proceedings except with the leave of the Court.

(4) An application for the grant of leave under paragraph (3) must be made by summons which must be served personally on the person against whom it is sought to enforce the judgment or order.

(5) Notwithstanding that a judgment or order to which any such application relates is binding on the person against whom the application is made, that person may dispute liability to have the judgment or order enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.

(6) The Court hearing an application for the grant of leave under paragraph (3) may order the question whether the judgment or order is enforceable against the person against whom the

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application is made to be tried and determined in any manner in which any issue or question in an action may be tried and determined.

[E.r. 12]

Representation of interested persons who cannot be ascertained, etc.

13.—(1) In any proceedings concerning—

- (a) the estate of a deceased person, or
- (b) property subject to a trust, or
- (c) the construction of a written instrument, including a statute,

the Court, if satisfied that it is expedient so to do, and that one or more of the conditions specified in paragraph (2) are satisfied, may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested (whether presently or for any future, contingent or unascertained interest) in or affected by the proceedings.

(2) The conditions for the exercise of the power conferred by paragraph (1) are as follows—

- (a) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;
- (b) that the person, class or some member of the class, though ascertained, cannot be found;
- (c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purpose of saving expense.

(3) Where in any proceedings to which paragraph (1) applies, the Court exercises the power conferred by that paragraph, a judgment or order of the Court given or made when the person or persons appointed in exercise of that power are before the Court shall be binding on the person or class represented by the person or persons so appointed.

(4) Where, in any such proceedings, a compromise is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings (including unborn or ascertained persons) but—

- (a) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise, or
- (b) the absent persons are represented by a person appointed under paragraph (1) who so assents,

the Court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order has been obtained by fraud or non-disclosure of material facts.

[E.r. 13]

Representation of beneficiaries by trustees, etc.

14.—(1) Any proceedings, including proceedings to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate, as the case may be; and any judgment or order given or made in those proceedings shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on, the ground that the trustees, executors or administrators, as the case may be, could not or did not in fact represent the interests of those persons in the first-mentioned proceedings.

(2) Paragraph (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under rule 13.

[E.r. 14]

Representation of deceased person interested in proceedings

15.—(1) Where in any proceedings it appears to the Court that a deceased person was interested in the matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as it would have been, bound had a personal representative of that person been a party to the proceedings.

(2) Before making an order under this rule, the Court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as it thinks fit.

[E.r. 15]

Proceedings against estates

16.—(1) Where any person against whom an action would have lain has died but the cause of action survives, the action may, if no grant of probate or administration has been made, be brought against the estate of the deceased.

(2) Without prejudice to the generality of paragraph (1), an action brought against "the personal representatives of A.B. deceased" shall be treated, for the purposes of that paragraph, as having been brought against his estate.

(3) An action purporting to have been commenced against a person shall be treated, if he is dead at its commencement, as having been commenced against his estate in accordance with paragraph (1), whether or not a grant of probate or administration was made before its commencement.

(4) In any such action as is referred to in paragraph (1) or (3)—

(a) the plaintiff shall, during the period of validity for service of the writ or originating summons, apply to the Court for an order appointing a person to represent the deceased's estate for the purpose of the proceedings or, if a grant of probate or administration has been made since the commencement of the action, for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person so appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;

(b) the Court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in subparagraph (a) and allow such amendments (if any) to be made and make such other order as the Court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

(5) Before making an order under paragraph (4) the Court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.

(6) Where an order is made under paragraph (4), rules 7(4) and 8(3) and (4) shall apply as if the order had been made under rule 7 on the application of the plaintiff.

(7) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings.

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[E.r. 6A]

Actions for wrongful interference with goods

17.—(1) Where the plaintiff in an action for wrongful interference with goods is one of two or more persons having or claiming any interest in the goods, then, unless he has the written authority of every other such person to sue on the latter's behalf, the writ or originating summons by which the action was begun shall be indorsed with a statement giving particulars of the plaintiff's title and identifying every other person who, to his knowledge, has or claims any interest in the goods.

This paragraph shall not apply to an action arising out of an accident on land due to a collision or apprehended collision involving a vehicle.

(2) A defendant to an action for wrongful interference with goods who desires to show that a third party has a better right than the plaintiff as respects all or any part of the interest claimed by the plaintiff may, at any time after entering an appearance and before any judgment or order is given or made on the plaintiff's claim, apply for directions as to whether any person named in the application (not being a person whose written authority the plaintiff has to sue on his behalf) should be joined with a view to establishing whether he has a better right than the plaintiff, or has a claim as a result of which the defendant might be doubly liable within the meaning of section 7 of the Torts (Interference with Goods) Act 1977.

(3) An application under paragraph (2) shall be made by summons, which shall be served personally on every person named in it as well as being served on the plaintiff.

(4) Where a person named in an application under paragraph (2) fails to appear on the hearing of the summons or to comply with any direction given by the Court on the application, the Court may by order deprive him of any right of action against the defendant for the wrong, either unconditionally or subject to such terms and conditions as the Court thinks fit.

[E.r. 10A]

Conduct of proceedings

18. The Court may give the conduct of any action, inquiry or other proceeding to such person as it thinks fit.

[E.r. 17]

ORDER 16

THIRD PARTY AND SIMILAR PROCEEDINGS

Third party notice

1.—(1) Where in any action a defendant who has entered an appearance—

- (a) claims against a person not already a party to the action any contribution or indemnity; or
- (b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and the defendant but also as between either or both of them and a person not already a party to the action,

then, subject to paragraph (2), the defendant may issue a notice in Form No. 17 or 18 in Appendix A. whichever is appropriate (in this Order referred to as a third party notice), containing a statement

of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or issue required to be determined.

(2) A defendant to an action may not issue a third party notice without the leave of the Court unless the action was begun by writ and he issues the notice before serving his defence on the plaintiff.

(3) Where a third party notice is served on the person against whom it is issued, he shall as from the time of service be a party to the action (in this Order referred to as a third party) with the same rights in respect of his defence against any claim made against him in the notice and otherwise as if he had been duly sued in the ordinary way by the defendant by whom the notice was issued.

[E.r. 1]

Application for leave to issue third party notice

2.—(1) An application for leave to issue a third party notice may be made ex parte but the Court may direct that a notice of motion for leave be issued.

(2) An application for leave to issue a third party notice must be supported by an affidavit stating—

- (a) the nature of the claim made by the plaintiff in the action;
- (b) the stage which proceedings in the action have reached;
- (c) the nature of the claim made by the applicant or particulars of, the question or issue required to be determined, as the case may be, and the facts on which the proposed third party notice is based; and
- (d) the name and address of the person against whom the third party notice is to be issued.

[E.r. 2]

Issue and service of, and entry of appearance to, third party notice

3.—(1) The order granting leave to issue a third party notice may contain directions as to the period within which the notice is to be issued.

(2) There must be served with every third party notice a copy of the writ or originating summons by which the action was begun and of the pleadings (if any) served in the action.

(3) An appearance to a third party notice may be entered in the appropriate office.

(4) Subject to the foregoing provisions of this rule, the following provisions of these Rules, namely, Order 6, rule 6(2), (3), (4) and (6), Order 10, Order 11 (except rule 3), Order 12, Order 21 and Order 75, rule 4, shall apply in relation to a third party notice and to the proceedings begun thereby as if—

- (a) the third party notice were a writ and the proceedings begun thereby an action, and
- (b) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued a defendant in that action.

[E.r. 3]

Third party directions

4.—(1) If the third party enters an appearance, the defendant who issued the third party notice may apply to the Court either by summons to be served on all the other parties to the action for directions or ex parte to receive and make a rule of Court a consent of all the parties providing for the conduct or disposal of the third party proceedings and such consent when made a rule of Court shall have the effect of an order.

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(2) If no summons is served to the third party and no ex parte application is made under paragraph (1), the third party may, not earlier than 7 days after entering an appearance, by summons to be served on all the other parties to the action, apply to the Court for directions or for an order to set aside the third party notice.

(3) On an application for directions under this rule the Court may—

- (a) if the liability of the third party to the defendant who issued the third party notice is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant; or
- (b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or
- (c) dismiss the application and terminate the proceedings on the third party notice,

and may do so either before or after any judgment in the action has been signed by the plaintiff against the defendant.

(4) On an application for directions under this rule the Court may give the third party leave to defend the action, either alone or jointly with any defendant, upon such terms as may be just, or to appear at the trial and to take such part therein as may be just, and generally may make such orders and give such directions as appear to the Court proper for having the rights and liabilities of the parties most conveniently determined and enforced and as to the extent to which the third party is to be bound by any judgment or decision in the action.

(5) Any order made or direction given under this rule may be varied or rescinded by the Court at any time.

[E.r. 4]

Default of third party; etc.

5.—(1) If a third party does not enter an appearance or, having been ordered to serve a defence, fails to do so.

- (a) he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment (including judgment by consent) or decision in the action in so far as it is relevant to any claim, question or issue stated in that notice; and
- (b) the defendant by whom the third party notice was issued may, if judgment in default is given against him in the action, at any time after satisfaction of that judgment and, with the leave of the Court, before satisfaction thereof, enter judgment against the third party in respect of any contribution or indemnity claimed in the notice, and, with the leave of the Court, in respect of any other relief or remedy claimed therein.

(2) If a third party or the defendant by whom a third party notice was issued makes default in serving any pleading which he is ordered to serve, the Court may, on the application by summons of that defendant or the third party, as the case may be, order such judgment to be entered for the applicant as he is entitled to on the pleadings or may make such other order as may appear to the Court necessary to do justice between the parties.

(3) The Court may at any time set aside or vary a judgment entered under paragraph (1)(b) or paragraph (2) on such terms (if any) as it thinks just.

[E.r. 5]

Setting aside third party proceedings

6. Proceedings on a third party notice may, at any stage of the proceedings, be set aside by the Court.

[E.r. 6]

Judgment between defendant and third party

7.—(1) Where in any action a defendant has served a third party notice, the Court may at or after the trial of the action or, if the action is decided otherwise than by trial, on application order such judgment as the nature of the case may require to be entered for the defendant against the third party or for the third party against the defendant.

(2) Where judgment is given for the payment of any contribution or indemnity to a person who is under a liability to make a payment in respect of the same debt or damage, the judgment shall not be enforced without the leave of the Court until that liability has been discharged.

(3) For the purpose of paragraph (2) “liability” includes liability under a judgment in the same or other proceedings and liability under an agreement to which section 1(4) of the Civil Liability (Contribution) Act 1978(10) applies.

[E.r. 7]

Claims and issues between a defendant and some other party

8.—(1) Where in any action a defendant who has entered an appearance—

- (a) claims against a person who is already a party to the action any contribution or indemnity; or
- (b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and himself but also as between either or both of them and some other person who is already a party to the action,

then, subject to paragraph (2), the defendant may, without leave, issue and serve on that person a notice containing a statement of the nature and grounds of his claim, or as the case may be, of the question or issue required to be determined, but need not serve with the notice any document referred to in rule 3(2).

(2) Where a defendant makes such a claim as, is mentioned in paragraph (1) and that claim could be made by him by counterclaim in the action, paragraph (1) shall not apply in relation to the claim.

(3) No appearance to such a notice shall be necessary if the person on whom it is served has entered an appearance in the action or is a plaintiff therein, and the same procedure shall be adopted for the determination between the defendant by whom, and the person on whom, such a notice is served on the claim, question or issue stated in the notice as would be appropriate under this Order if the person served with the notice were a third party and (where he has entered an appearance in the action or is a plaintiff) had entered an appearance to the notice.

(4) Rule 4(2) shall have effect in relation to proceedings on a notice issued under this rule as if for the words “7 days after entering an appearance” there were substituted the words “21 days after service of the notice on him”.

(5) Notwithstanding paragraph (3) it shall not be necessary for any party whose only claim under paragraph (1) of this rule is for contribution or indemnity to apply to the Court for directions or serve a statement of his claim but any issue between that party and the person on whom such notice is served shall be determined at or after the trial of the action as the trial judge may direct.

(10) 1978 c. 47

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(6) Where defendants are sued as tortfeasors liable in respect of the same damage, they shall be treated as opposite parties and no notice need be served under this rule, but any such defendant, if he intends, in support of a claim for contribution or indemnity, to rely on facts or particulars not pleaded by the plaintiff or on any contractual right, must furnish to the other parties particulars in Form 17.

[E.r. 8]

Claims by third and subsequent parties

9.—(1) Where a defendant has served a third party notice and the third party makes such a claim or requirement as is mentioned in rule 1 or rule 8, this order shall, with the modification mentioned in paragraph (2) and any other necessary modifications, apply as if the third party were a defendant; and similarly where any further person to whom by virtue of this rule this Order applies as if he were a third party makes such a claim or requirement.

(2) The modification referred to in paragraph (1) is that paragraph (3) shall have effect in relation to the issue of a notice under rule 1 by a third party in substitution for rule 1(2).

(3) A third party may not issue a notice under rule 1 without the leave of the Court unless the action in question was begun by writ and he issues the notice before the expiration of 14 days after the time limited for appearing to the notice issued against him.

[E.r. 9]

Offer of contribution

10. If, at any time after he has entered an appearance, a party to an action who, either as a third party or as one of two or more tortfeasors liable in respect of the same damage, stands to be held liable in the action to another party to contribute towards any debt or damages which may be recovered against that other party in the action, makes (without prejudice to his defence) a written offer to that other party to contribute a specified amount or to a specified extent to the debt or damages, then, notwithstanding that he reserves the right to bring the offer to the attention of the judge at the trial, the offer shall not be brought to the attention of the judge until after all questions of liability and amount of debt or damages have been decided.

[E.r. 10]

Disposal of claim for contribution or indemnity

11. Any claim to contribution or indemnity or other relief or remedy under this Order may be decided in the action notwithstanding that the plaintiff's claim has been satisfied by a payment into Court, compromise, judgment or otherwise.

Counterclaim by defendant

12. Where in any action a counterclaim is made by a defendant, the foregoing provisions of this Order shall apply in relation to the counterclaim as if the subject-matter of the counterclaim were the original subject-matter of the action, and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

[E.r. 11]

ORDER 17

INTERPLEADER

Entitlement to relief by way of interpleader

1. Where a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto, he may apply to the Court for relief by way of interpleader.

[E.r. 1]

Mode of application

2.—(1) An application for relief under this Order must be made by originating summons unless made in a pending action, in which case it must be made by summons in the action.

(2) No appearance need be entered to an originating summons under this rule.

(3) A summons under this rule must be supported by evidence that the applicant—

- (a) claims no interest in the subject-matter in dispute other than for charges or costs,
- (b) does not collude with any of the claimants to that subject-matter, and
- (c) is willing to pay or transfer that subject-matter into court or to dispose of it as the Court may direct.

[E.r. 3]

Powers of Court hearing summons

3.—(1) Where on the hearing of a summons under this Order all the persons by whom adverse claims to the subject-matter in dispute (hereafter in this Order referred to as “the claimants”) appear, the Court may order—

- (a) that any claimant be made a defendant in any action pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this Order, or
- (b) that an issue between the claimants be stated and tried and may direct which of the claimants is to be plaintiff and which defendant.

(2) Where—

- (a) all the claimants consent or any of them so requests, or
- (b) the question at issue between the claimants is a question of law and the facts are not in dispute,

the Court may summarily determine the question at issue between the claimants and make an order accordingly on such terms as may be just.

(3) Where a claimant, having been duly served with a summons for relief under this Order, does not appear on the hearing of the summons or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the claimant, and all persons claiming under him, for ever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the claimants as between themselves.

[E.r. 5]

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Power to stay proceedings

4. Where a defendant to an action applies for relief under this Order in the action, the Court may by order stay all further proceedings in the action.

[E.r. 7]

Other powers

5. Subject to the foregoing rules of this Order, the Court may in or for the purpose of any interpleader, proceedings make such order as to costs or any other matter as it thinks just.

[E.r. 8]

One order in several causes or matters

6. Where the Court considers it necessary or expedient to make an order in any interpleader proceedings in several pending causes or matters pending in any Division, the Court may make such, an order, and the, order shall be entitled in all those causes or matters and shall be binding on all the parties to them.

[E.r. 9]

Discovery

7. Orders 24 and 26 shall, with the necessary modifications, apply in relation to an interpleader issue as they apply in relation to any other cause or matter.

[E.r. 10]

Trial of interpleader issue

8.—(1) Order 35 shall, with the necessary modifications; apply to the trial of an interpleader issue as it applies to the trial of an action.

(2) The Court by whom an interpleader issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the interpleader proceedings.

[E.r. 11]

ORDER 18

PLEADINGS

Service of statement of claim

1. Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are two or more defendants, on each defendant, and must do so either when the writ, or notice of the writ, is served on that defendant or at any time after service of the writ or notice but before the expiration of 6 weeks after that defendant enters an appearance.

[E.r. 1]

Service of defence

2.—(1) Subject to paragraph (2), a defendant who enters an appearance in, and intends to defend, an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before

the expiration of 21 days after the time limited for appearing or after the statement of claim is served on him, whichever is the later.

(2) If a summons under Order 14, rule 1 or under Order 86, rule 1 is served on a defendant before he serves his defence, paragraph (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to, defend the action and, in that case, shall have effect as if it required him to serve his defence within 21 days after the making of the order or within such other period as may be specified therein.

[E.r. 2]

Service of reply and defence to counterclaim

3.—(1) A plaintiff on whom a defendant serves a defence must serve a reply on that defendant if it is needed for compliance with rule 8, and if no reply is served, rule 14(1) will apply.

(2) A plaintiff on whom a defendant serves a counterclaim must, if he intends to defend it, serve on that defendant a defence to counterclaim.

(3) Where a plaintiff serves both a reply and a defence to counterclaim on any defendant, he must include them in the same document.

(4) A reply to any defence must be served by the plaintiff before the expiration of 21 days after the service on him of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of 21 days after the service on him of the counterclaim to which it relates.

[E.r. 3]

Pleadings subsequent to reply

4. No pleading subsequent to a reply or a defence to counterclaim shall be served except with the leave of the Court.

[E.r. 4]

Service of pleadings in the Long Vacation

5. Without prejudice to Order 3, rule 3, pleadings may be served during the Long Vacation.

Pleadings: formal requirements

6.—(1) Every pleading in an action must bear on its face—

- (a) the year in which the writ in the action was issued and the number of the action.
- (b) the title of the action.
- (c) the Division of the High Court to which the action is assigned.
- (d) the description of the pleading, and
- (e) the date on which it was served.

(2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.

(3) Dates, sums and other numbers must be expressed in a pleading in figures and not in words.

(4) Every pleading of a party must be indorsed—

- (a) where the party sues or defends in person, with his name and address;
- (b) in any other case, with the name or firm and business address of the solicitor by whom it was served.

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(5) Every pleading of a party must be signed by counsel, if settled by him, and, if not, by the party's solicitor or by the party, if he sues or defends in person.

[E.r. 6]

Facts, not evidence, to be pleaded

7.—(1) Subject to the provisions of this rule, and rules 10, 11, 12 and 23, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case permits.

(2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.

(3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.

(4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.

(5) A party must refer in his pleading to any statutory provision on which he relies, specifying the relevant section, subsection, regulation, paragraph or other provision, as the case may be.

[E.r. 7]

Matters which must be specifically pleaded

8.—(1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality—

- (a) which he alleges makes any claim or defence of the opposite party not maintainable; or
- (b) which, if not specifically pleaded, might take the opposite party by surprise; or
- (c) which raises issues of fact not arising out of the preceding pleading,

and, where the defendant intends to rely on the defence of inevitable accident or Act of God, he must specifically plead such defence with all necessary particulars, but this requirement shall not transfer to the defendant any burden of proof which lies on, the plaintiff.

(2) Without prejudice to paragraph (1), a defendant to an action for the recovery of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.

(3) A claim for exemplary damages must be specifically pleaded together with the facts on which the party pleading relies.

[E.r. 8]

Matters may be pleaded whenever arising

9. Subject to rules 7(1), 10 and 15(2), a party may in any pleading plead any matter which has arisen at any time, whether before or since the issue of the writ.

[E.r. 9]

Departure

10.—(1) A party shall not in any pleading make any allegation of fact, or raise any new ground, or claim, inconsistent with a previous pleading of his.

(2) Paragraph (1) shall not be taken as prejudicing the right of a party to amend, or, apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

[E.r. 10]

Points of law may be pleaded

11. A party may by his pleading raise any point of law.

[E.r. 11]

Particulars of pleading

12.—(1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words—

(a) particulars of any negligence, breach of statutory duty, misrepresentation, fraud, breach of trust, wilful default, undue influence or fault of the plaintiff on which the party pleading relies; and

(b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed 3 folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served and, if so, when, or is to be served with the pleading.

(3) The Court, may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.

(4) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of paragraph (3), the Court may, on such terms as it thinks just, order that party to serve on any other party—

(a) where he alleges knowledge, particulars of the facts on which he relies, and

(b) where he alleges notice, particulars of the notice.

(5) An order under this rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

(6) Where the applicant for an order under this rule did not apply by letter for the particulars he requires, the Court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.

[E.r. 12]

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Admissions and denials

13.—(1) Subject to paragraph (4), any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial of it.

(2) A traverse may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.

(3) Subject to paragraph (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them.

(4) Any allegation that a party has suffered damage and any allegation as to the amount of damages is deemed to be traversed unless specifically admitted.

[E.r. 13]

Denial by joinder of issue

14.—(1) If there is no reply to a defence, there is an implied joinder of issue on that defence.

(2) Subject to paragraph (3)—

- (a) there is at the close of pleadings an implied joinder of issue on the pleading last served, and
- (b) a party may in his pleading expressly join issue on the next preceding pleading.

(3) There can be no joinder of issue, implied or express, on a statement of claim or counterclaim.

(4) A joinder of issue operates as a denial of every material, allegation of fact made in the pleading on which there is an implied or express joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express, joinder of issue operates as, a denial of every other such allegation.

[E.r. 14]

Statement of claim

15.—(1) A statement of claim must state specifically the relief or, remedy which, the plaintiff claims; but costs need not be specifically claimed.

(2) A statement of claim shall not contain any allegation or claim in respect of a cause of action unless that cause of, action is mentioned in the writ or arises from facts which, are the same as, or include or form part of, facts giving rise to a cause of action, so mentioned; but, subject to that, a plaintiff may in his statement of claim alter, modify or extend any claim made by him in the indorsement of the writ without amending the indorsement.

(3) Every statement of claim must bear on its face a statement of the date on which the writ in the action was issued.

[E.r. 15]

Defence of tender

16. Where in any action a defence of tender before action is pleaded, the defendant must pay into court in accordance with Order 22 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into court has been made.

[E.r. 16]

Defence of set-off

17. Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim.

[E.r. 17]

Counterclaim and defence to counterclaim

18. Without prejudice to the general application of this Order to a counterclaim and a defence to counterclaim, or to any provision thereof which applies to either of those pleadings specifically—

- (a) rule 15(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff;
- (b) rules 8(2), 16 and 17 shall, with the necessary modifications apply to a defence to counterclaim as they apply to a defence.

[E.r. 18]

Striking out pleadings and indorsements

19.—(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that—

- (a) it discloses no reasonable cause of action or defence, as the case may be; or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition; as the case may be, were a pleading.

[E.r. 19]

Close of pleadings

20.—(1) The pleadings in an action are deemed to be closed—

- (a) at the expiration of 21 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim, or
- (b) if neither a reply nor a defence to counterclaim is served at the expiration of 21 days after service of the defence.

(2) The pleadings in an action are deemed to be closed at the time provided by paragraph (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

[E.r. 20]

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Trial without pleadings

21.—(1) Where in an action to which this rule applies any defendant has entered an appearance in the action, the plaintiff or that defendant may apply to the Court by summons for an order that the action shall be tried without pleadings or further pleadings, as the case may be.

(2) If, on the hearing of an application under this rule, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any other reason the action can properly be tried without pleadings or further pleadings, as the case may be, the Court shall order the action to be so tried, and may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree to such, a statement, may settle the statement itself.

(3) Where the Court makes an order under paragraph (2), it shall, and where it dismisses an application for such an order, it may, give such directions as to the further conduct of the action as may be appropriate.

(4) This rule applies to every action begun by writ other than one which includes—

- (a) a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment; or
- (b) a claim by the plaintiff based on an allegation of fraud.

[E.r. 21]

Saving for defence under Merchant Shipping Acts

22. Nothing in Order 75, rules 2 and 36 to 39, shall be taken as limiting the right of any shipowner or other person to rely by way of defence on any provision of the Merchant Shipping Acts 1894 to 1965 which limits the amount of his liability in connection with a ship or other property.

[E.r. 22]

Conviction, etc. to be adduced in evidence: matters to be pleaded

23.—(1) If in any action which is to be tried with pleadings any party intends, in reliance on section 7 of the Civil Evidence Act (Northern Ireland) 1971⁽¹¹⁾, to adduce evidence that a person was convicted of an offence by or before a court in the United Kingdom or by a court-martial there or elsewhere, he must include in his pleading a statement of his intention with particulars of—

- (a) the conviction and the date thereof,
- (b) the court or court-martial which made the conviction, and
- (c) the issue in the proceedings to which the conviction is relevant.

(2) If in any action which is to be tried with pleadings any party intends, in reliance on section 8 of the said Act of 1971, to adduce evidence that a person was found guilty of adultery in matrimonial proceedings or was adjudged to be the father of a child in affiliation proceedings before a court in the United Kingdom, he must include in his pleading a statement of his intention with particulars of—

- (a) the finding or adjudication and the date thereof,
- (b) the court which made the finding or adjudication and the proceedings in which it was made, and
- (c) the issue in the proceedings to which the finding or adjudication is relevant.

(3) Where a party's pleading includes such a statement as is mentioned in paragraph (1) or (2), then if the opposite party—

(11) 1971 c. 36 (N.I.)

- (a) denies the conviction, finding of adultery or adjudication of paternity to which the statement relates, or
- (b) alleges that the conviction, finding or adjudication was erroneous, or
- (c) denies that the conviction, finding or adjudication is relevant to any issue in the proceedings,

he must make the denial or allegation in his pleading.

- (4) This rule shall not apply to evidence intended to impeach the credit of a party or witness.

[E.r. 7A]

ORDER 19

DEFAULT OF PLEADINGS

Default in service of statement of claim

1. Where the plaintiff is required by these Rules to serve a statement of claim on a defendant and he fails to serve it on him, the defendant may, after the expiration of the period fixed by or under these Rules for service of the statement of claim, apply to the Court for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

[E.r. 1]

Default of defence claim for liquidated demand

2.—(1) Where the plaintiff's claim against a defendant is for a liquidated demand only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.

(2) Order 13, rule H2) and (3), shall apply for the purposes of this rule as it applies for the purposes of that rule.

[E.r. 2]

Default of defence : claim for unliquidated damages

3. Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

[E.r. 3]

Default of defence : claim for detention of goods

4.—(1) Where the plaintiff's claim against a defendant relates to the detention of goods only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for the service of the defence and subject to Order 42, rule 6—

- (a) at his option enter either—
 - (i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs, or

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(ii) interlocutory judgment for the value of the goods to be assessed and costs, or
 (b) apply by summons for judgment against that defendant for delivery of the goods without giving him the alternative of paying their assessed value,
 and in any case proceed with the action against the other defendants, if any.

(2) A summons under paragraph (1)(b) must be supported by affidavit and, notwithstanding Order 65, rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

[E.r. 4]

Claim for possession of land

5.—(1) Where the plaintiff's claim against a defendant is for possession of land only, then, subject to paragraphs (2), (3) and (4), if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, and on producing a certificate by his solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 88, rule 1, enter judgment for possession of the land as against that defendant and costs, and proceed with the action against the other defendants, if any.

(2) The plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under this rule unless he produces a certificate by his solicitor, or (if he sues in person) an affidavit, stating that the claim does not relate to a dwelling-house.

(3) The plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under this rule where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent unless he produces a certificate by his solicitor, or (if he sues in person) an affidavit, stating that the land does not comprise or include a holding agricultural or pastoral or partly agricultural and partly pastoral.

(4) The plaintiff shall not be entitled to enter judgment under this rule where the writ is indorsed with a claim against a defendant for possession of land for non-payment of rent unless he files an affidavit made by the landlord, his agent, receiver or clerk, stating that there was at the date of issue of the writ at least one year's rent due over and above all just and fair allowances.

(5) An application for leave to enter judgment under paragraph (2) or (3) shall be by summons stating the grounds of the application, and the summons must, unless the Court otherwise orders and notwithstanding anything in Order 65, rule 9, be served on the defendant against whom it is sought to enter judgment.

(6) If the Court refuses leave to enter judgment, it may make or give any such order or directions as it might have made or given had the application been an application for judgment under Order 14, rule 1.

(7) Where there is more than one defendant, any judgment entered under this rule shall contain a stay of enforcement against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

(8) Where the plaintiff is a superior landlord and he applies under paragraph (3) for leave to enter judgment against a defendant who is an immediate landlord the Court may, having regard to the provisions of section 12 of the Land Law (Ireland) Act 1896⁽¹²⁾:—

- (a) give such directions as to notice to tenants and otherwise and grant leave subject to such limitations as to enforcement of the judgment and such provisions as to costs as it thinks just;

(12) 1896 c. 47

- (b) on proof by affidavit that the non-payment of rent by the defendant is due to the non-payment of rent by the tenant of the holding, issue a certificate to that effect.

[E.r. 5]

Default of defence: mixed claims

6. Where the plaintiff makes against a defendant two or more of the claims mentioned in rules 2 to 5, and no other claim, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim made, and proceed with the action against the other defendants, if any.

[E.r. 6]

Default of defence: other claims

7.—(1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 5, then, if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.

(2) Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph, the plaintiff may—

- (a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or
- (b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment, against the other defendants.

(3) An application under paragraph (1) must be by summons or motion.

[E.r. 7]

Default of defence to counterclaim

8. A defendant who counterclaims against a plaintiff shall be treated for the purposes of rules 2 to 7 as if he were a plaintiff who had made against a defendant the claim made in the counterclaim and, accordingly, where the plaintiff or any other party against whom the counterclaim is made fails to serve a defence to counterclaim, those rules shall apply as if the counterclaim were a statement of claim, the defence to counterclaim a defence and the parties making the counterclaim and against whom it is made were plaintiffs and defendants respectively, and as if references to the period fixed by or under these Rules for service of the defence were references to the period so fixed for service of the defence to counterclaim.

[E.r. 8]

Setting aside judgment

9. The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

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[E.r. 9]

ORDER 20 AMENDMENT

Amendment of writ without leave

1.—(1) Subject to paragraph (3), the plaintiff may, without the leave of the Court, amend the writ once at any time before the pleadings in the action begun by the writ are deemed to be closed.

(2) Where a writ is amended under this rule after service thereof, then, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on each defendant to the action.

(3) This rule shall not apply in relation to an amendment which consists of—

- (a) the addition, omission or substitution of a party to the action or an alteration of the capacity in which a party to the action sues or is sued, or
- (b) the addition or substitution of a new cause of action, or
- (c) (without prejudice to rule 3(1)) an amendment of the statement of claim (if any) indorsed on the writ,

unless the amendment is made before service of the writ on any party to the action.

[E.r. 1]

Amendment of appearance

2. A defendant may not amend his memorandum of appearance without the leave of the Court.

[E.r. 2]

Amendment of pleadings without leave

3.—(1) A party may, without the leave of the Court, amend any pleading of his once at any time before the pleadings are deemed to be closed and, where he does so, he must serve the amended pleading on the opposite party.

(2) Where an amended statement of claim is served on a defendant—

- (a) the defendant, if he has already served a defence on the plaintiff, may amend his defence, and
- (b) the period for service of his defence or amended defence, as the case may be; shall be either the period fixed by or under these Rules for service of his defence or a period of 14 days after the amended statement of claim is served on him, whichever expires later.

(3) Where an amended defence is served on the plaintiff by a defendant—

- (a) the plaintiff, if he has already served a reply on that defendant, may amend his reply, and
- (b) the period for service of his reply or amended reply, as the case may be, shall be either the period fixed by or under these Rules for service of his reply or a period of 14 days after the amended defence is served on him.

(4) In paragraphs (2) and (3) references to a defence and a reply include references to a counterclaim and a defence to counterclaim respectively.

(5) Where an amended counterclaim is served by a defendant on a party (other than the plaintiff) against whom the counterclaim is made, paragraph (2) shall apply as if the counterclaim were a

statement of claim and as if the party by whom the counterclaim is made were the plaintiff and the party against whom it is made a defendant.

(6) Where a party has pleaded to a pleading which is subsequently amended and served on him under paragraph (1), then, if that party does not amend his pleading under the foregoing provisions of this rule, he shall be taken to rely on it in answer to the amended pleading, and Order 18, rule 14(2), shall have effect in such a case as if the amended pleading had been served at the time when that pleading, before its amendment under paragraph (1), was served.

[E.r. 3]

Application for disallowance of amendment made without leave

4.—(1) Within 14 days after the service on a party of a writ amended under rule 1(1) or of a pleading amended under rule 3(1), that party may apply to the Court to disallow the amendment.

(2) Where the Court hearing an application under this rule is satisfied that if an application for leave to make the amendment in question had been made under rule 5 at the date when the amendment was made under rule 1(1) or rule 3(1) leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part to be struck out.

(3) Any order made on an application under this rule may be made on such terms as to costs or otherwise as the Court thinks just.

[E.r. 4]

Amendment of writ or pleading with leave

5.—(1) Subject to Order 15, rules 6, 7 and 8, and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

(3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the party intending to sue or, as the case may be, intended to be sued.

(4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under paragraph (2) if the capacity in which, if the amendment is made, the party will sue is one in which at the date of issue of the writ or the making of the counterclaim, as the case may be, he might have sued.

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

[E.r. 5]

Amendment during Long Vacation

6. Every writ, originating summons, petition, pleading or other document in any proceedings may be amended during the Long Vacation.

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[E.r. 6]

Amendment of other originating process

7. Rule 5 shall have effect in relation to an originating summons, a petition and notice of an originating motion as it has effect in relation to a writ.

[E.r. 7]

Amendment of certain other documents

8.—(1) For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at any stage of the proceedings and either of its own motion or on the application of any party to the proceedings order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) This rule shall not have effect in relation to a judgment or order.

[E.r. 8]

Failure to amend after order

9. Where the Court makes an order under this Order giving any party leave to amend a writ, pleading or other document, then, if that party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, of a period of 14 days after the order was made, the order shall cease to have effect, without prejudice, however, to the power of the Court to extend the period.

[E.r. 9]

Mode of amendment of writ, etc.

10.—(1) Where the amendments authorised under any rule of this Order to be made in a writ, pleading or other document are so numerous or of such nature or length that to make written alterations of the document so as to give effect to them would make it difficult or inconvenient to read, a fresh document, amended as so authorised, must be prepared and, in the case of a writ or originating summons re-issued, but, except as aforesaid and subject to any direction given under rules 5 or 8, the amendments so authorised may be effected by making in writing the necessary alterations of the document and, in the case of a writ or originating summons, causing it to be re-sealed and filing a copy thereof.

(2) A writ, pleading or other document which has been amended under this Order must be indorsed with a statement that it has been amended, specifying the date on which it was amended, the name of the judge or master by whom the order (if any) authorising the amendment was made and the date thereof, or, if no such order was made, the number of the rule of this Order in pursuance of which the amendment was made.

[E.r. 10]

Amendment of judgment and orders

11. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on motion or summons without an appeal.

[E.r. 11]

ORDER 21

WITHDRAWAL AND DISCONTINUANCE

Withdrawal of appearance

1. A party who has entered an appearance in an action may withdraw the appearance at any time with the leave of the Court.

[E.r. 1]

Discontinuance of action, etc., without leave

2.—(1) The plaintiff in an action begun by writ may, without the leave of the Court, discontinue the action, or withdraw any particular claim made by him therein, as against any or all of the defendants at any time not later than 14 days after service of the defence on him or, if there are two or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned.

(2) A defendant may, without the leave of the Court—

(a) withdraw his defence or any part of it at any time.

(b) discontinue a counterclaim, or withdraw any particular claim made by him therein, against any or all of the parties against whom it is made, at any time not later than 21 days after service on him of a defence to counterclaim or, if the counterclaim is made against two or more parties, of the defence to counterclaim last served,

by serving a notice to that effect on the plaintiff or other party concerned.

(3) Where there are two or more defendants to an action not all of whom serve a defence on the plaintiff, and the period fixed by or under these Rules for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence, paragraph (1) shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period.

This paragraph shall apply in relation to a counterclaim as it applies in relation to an action with the substitution for references to a defence, to the plaintiff and to paragraph (1), of references to a defence to counterclaim, to the defendant and to paragraph (2) respectively.

(4) If all parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by producing to the proper officer a written consent to the action being withdrawn signed by all the parties.

[E.r. 2]

Discontinuance of action, etc., with leave

3.—(1) Except as provided by rule 2, a party may not discontinue an action (whether begun by writ or otherwise) or counterclaim, or withdraw any particular claim made by him therein, without the leave of the Court, and the Court hearing an application for the grant of such leave may order the action or counterclaim to be discontinued, or any particular claim made therein to be struck out, as against all or any of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.

(2) An application for the grant of leave under this rule may be made by summons or motion.

[E.r. 3]

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Effect of discontinuance

4. Subject to any terms imposed by the Court in granting leave under rule 3, the fact that a party has discontinued an action or counterclaim or withdrawn a particular claim made by him therein shall not be a defence to a subsequent action for the same, or substantially the same, cause of action.

[E.r. 4]

Stay of, subsequent action until costs paid

5.—(1) Where a party has discontinued an action or counterclaim or withdrawn any particular claim made by him therein and he is liable to pay any other party's costs of the action or counterclaim or the costs occasioned to any other party by the claim withdrawn, then if, before payment of those costs, he subsequently brings an action for the same, or substantially the same, cause of action, the Court may order the proceedings in that action to be stayed until those costs are paid.

(2) An application for an order under this rule may be made by summons or motion.

[E.r. 5]

Withdrawal of summons

6. A party who has taken out a summons in a cause or matter may not withdraw it without the leave of the Court.

[E.r. 6]

ORDER 22

PAYMENT INTO AND OUT OF COURT

Payment into court

1.—(1) In any action for debt or damages any defendant may, without leave, at any time after he has entered an appearance in the action and before the close of pleadings or with leave at any time after the close of pleadings, pay into court a sum of money in satisfaction of the cause of action in respect of which the plaintiff claims or, where two or more causes of action are joined in the action, a sum or sums of money in satisfaction of any or all of those causes of action.

(2) On making any payment into court under this rule, and on increasing any payment already made, the defendant must give notice thereof in Form No. 20 in Appendix A to the plaintiff and every other defendant (if any) and within 3 days after receiving the notice the plaintiff must send the defendant a written acknowledgment of its receipt.

(3) A defendant may, without leave, before the close of pleadings and thereafter with leave, give notice of an increase in a payment made under this rule but, subject to that and without prejudice to paragraph (5), a notice of payment may not be withdrawn or amended without the leave of the Court which may be granted on such terms as may be just.

(4) Where two or more causes of action are joined in the action and money is paid into court under this rule, in respect of all, or some only of, those causes of action, the notice of payment—

- (a) must state that the money is paid in respect of all those causes of action, or, as the case may be, must specify the cause or causes of action in respect of which the payment is made, and
- (b) where the defendant makes separate payments in respect of each, or any two or more, of those causes of action, must specify the sum paid in respect of that cause or, as the case may be, those causes of action.

(5) Where a single sum of money is paid into court under this rule in respect of two or more causes of action, then, if it appears to the Court that the plaintiff is embarrassed by the payment, the Court may, subject to paragraph (6), order the defendant to amend the notice of payment so as to specify the sum paid in respect of each cause of action.

(6) Where a cause of action under the Fatal Accidents (Northern Ireland) Order 1977⁽¹³⁾ and a cause of action under the Law Reform-(Miscellaneous Provisions) Act (Northern Ireland) 1937⁽¹⁴⁾ are joined in an action, with or without any other cause of action, the causes of action under the said Order and the said Act shall, for the purpose of paragraph (5), be treated as one cause of action.

[E.r. 1]

Payment in by defendant who has counterclaimed

2. Where a defendant, who makes by counterclaim a claim against the plaintiff for a debt or damages, pays a sum or sums of money into court under rule 1, the notice of payment must state, if it be the case, that in making the payment the defendant has taken into account and intends to satisfy—

- (a) the cause of action in respect of which he claims, or
- (b) where two or more causes of action are joined in the counterclaim, all those causes of action or if not all, which of them.

[E.r. 2]

Acceptance of money paid into court

3.—(1) Where money is paid into court under rule 1 then, within 21 days after receipt of the notice of payment or, where more than one payment has been made or the notice has been amended, within 21 days after receipt of the notice of the last payment or the amended notice but, in any case, before the trial or hearing of the action begins, the plaintiff may—

- (a) where the money was paid in respect of the cause of action, or all the clauses of action in respect of which he claims, accept the money in satisfaction of that cause of action or those causes of action, as the case may be, or
- (b) where the money was paid in respect of some only of the causes of action in respect of which he claims, accept in satisfaction of any such cause or causes of action the sum specified in respect of that cause or those causes of action in the notice of payment,

by giving notice in Form No. 21 in Appendix A to every defendant to the action.

(2) On the plaintiff's accepting any money paid into court all further proceedings in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates, both against the defendant making the payment and against any other defendant sued jointly with him or in the alternative to him, shall be stayed.

(3) Where money is paid into court by a defendant who made a counterclaim and the notice of payment stated, in relation to any sum so paid, that in making the payment the defendant had taken into account and satisfied the cause or causes of action, or the specified cause or causes of action in respect of which he claimed, then, on the plaintiff's accepting that sum, all further proceedings on the counterclaim or in respect of the specified cause or causes of action, as the case may be, against the plaintiff shall be stayed.

(4) A plaintiff who has accepted any sum paid into court shall, subject to rules 4 and 10, be entitled to receive payment of that sum in satisfaction of the cause or causes of action to which the acceptance relates.

⁽¹³⁾ S.I. 1977 No. 1251 (N.I. 18)

⁽¹⁴⁾ 1937 c. 9 (N.I.)

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[E.r. 3]

Order for payment out of money accepted required in certain cases

- 4.—(1) Where a plaintiff accepts any sum paid into court and that sum was paid into court—
- (a) by some but not all of the defendants sued jointly or in the alternative by him, or
 - (b) with a defence of tender before action, or,
 - (c) in an action to which Order 80 rule 10 applies, or,
 - (d) in satisfaction either of causes of action arising under the Fatal Accidents (Northern Ireland) Order 1977 and Part III of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937, or a cause of action arising under the said Order where more than one person is entitled to the money,

the money in court shall not be paid out except under paragraph (2), or in pursuance of an order of the Court, and the order shall deal with the whole costs of the action or of the cause of action to which the payment relates, as the case may be.

(2) Where an order of the Court is required under paragraph (1) by reason only of paragraph (1) (a), then if, either before or after accepting the money paid into court by some only of the defendants sued jointly or in the alternative by him, the plaintiff discontinues the action against all the other defendants and those defendants consent in writing to the payment out of that sum, it may be paid out without an order of the Court.

(3) Where after the trial or hearing of an action has begun a plaintiff accepts any money paid into court and all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates are stayed by virtue of rule 3(2), then, notwithstanding anything in paragraph (2), the money shall not be paid out except in pursuance of an order of the Court, and, the order shall deal with the whole costs of the action.

[E.r. 4]

Money remaining in court

5. If any money paid into court in all action is not accepted in accordance with rule 3, the money remaining in court shall not be paid out except in pursuance of an order of the Court which may be made at any time before, at or after the trial or hearing of the action; and where such an order is made before the trial or hearing the money shall not be paid out except in satisfaction of the cause or causes of action in respect of which it was paid in.

[E.r. 5]

Counterclaim

6. A plaintiff against whom a counterclaim is made and any other defendant to the counterclaim may pay money into court in accordance with rule 1, and that rule and rules 3 (except paragraph (3)), 4 and 5 shall apply accordingly with the necessary modifications.

[E.r. 6]

Non-disclosure of payment into court

7. Except in an action to which a defence of tender before action is pleaded, and except in an action all further proceedings in which are stayed by virtue of rule 3(2) after the trial or hearing has begun, the fact that money has been paid into court under the foregoing provisions of this Order shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing

of the action or counterclaim or of any question or issue as to the debt or damages until all questions of liability and of the amount of the debt or damages have been decided.

[E.r. 7]

Money paid into court under order

8.—(1) Subject to paragraph (2), money paid into court under an order of the Court shall not be paid out except in pursuance of an order of the Court.

(2) Unless the Court otherwise orders, a party who has paid money into court in pursuance of an order made under Order 14—

- (a) may by notice to the other party appropriate the whole or any part of the money and any additional payment, if necessary, to any particular claim made in the writ or counterclaim, as the case may be, and specified in the notice, or
- (b) if he pleads a tender, may by his pleadings appropriate the whole or any part of the money as payment into court of the money alleged to have been tendered;

and money appropriated in accordance with this rule shall be deemed to be money paid into court in accordance with rule 1 or money paid into court with a plea of tender, as the case may be, and this Order shall apply accordingly.

[E.r. 8]

Person to whom payment to be made

9.—(1) Where the party entitled to money in court is a person in respect of whom a certificate is or has been in force entitling him to legal aid under Part I of the Legal Aid and Advice Act (Northern Ireland) 1965(15), payment shall be made only to that party's solicitor (or, if he is no longer represented by a solicitor, then, if the Court so orders, to the Incorporated Law Society of Northern Ireland), without the need for any authority from the party.

(2) Subject to paragraph (1); payment shall be made to the party entitled or to his solicitor.

(3) This rule applies whether the money in court has been paid into court under rule 1 or under an order of the Court or a certificate of a master.

[E.r. 10]

Payment out: small intestate estates

10. Where a person entitled to a fund in court, or a share of such fund, dies intestate and the Court is satisfied that no grant of administration of his estate has been made and that the assets of his estate do not exceed £1,500 in value, including the value of the fund or share, it may order that the fund or share shall be paid, transferred or delivered to the person who, being a widower, widow, child, father, mother, brother or sister of the deceased, would have the prior right to a grant of administration of the estate of the deceased.

[E.r. 11]

Payment of hospital expenses

11.—(1) This rule applies in relation to an action or counterclaim for bodily injury arising out of the use of a motor vehicle on a road or in a place to which the public have a right of access in which the claim for damages includes a sum for hospital expenses.

(15) 1965 c. 8

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(2) Where the party against whom the claim is made, or an authorised insurer within the meaning of Part V of the Road Traffic Act (Northern Ireland) 1970⁽¹⁶⁾ pays the amount for which that party or insurer, as the case may be, is or may be liable under section 84 of that Act in respect of the treatment afforded by a hospital to the person in respect of whom the claim is made, the party against whom the claim is made must, within 7 days after the claim is made, give notice of the payment to all the other parties to the action.

[E.r. 12]

Investment of money in court

12. Cash under the control of or subject to the order of the Court may be invested in any manner specified in paragraphs 1 to 10 and 12 of Part II of Schedule 1 to the Trustee Investments Act 1961⁽¹⁷⁾, as restricted in their operation by Part IV of that Schedule.

[E.r. 13]

ORDER 23

SECURITY FOR COSTS

Security for costs of action, etc.

1.—(1) Where, on the application of a defendant to an action or other proceeding in the High Court, it appears to the Court—

- (a) that the plaintiff is ordinarily resident out of the jurisdiction, or
- (b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so, or
- (c) subject to paragraph (2), that the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated therein, or
- (d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,

then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceeding as it thinks just.

(2) The Court shall not require a plaintiff to give security by reason only of paragraph (1)(c) if he satisfies the Court that the failure to state his address or the mis-statement thereof was made innocently and without intention to deceive.

(3) The references in the foregoing paragraphs to a plaintiff and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counterclaim.

[E.r. 1]

⁽¹⁶⁾ 1970 c. 2 (N.I.)
⁽¹⁷⁾ 1961.c. 62

Manner of giving security

2. Where an order is made requiring any party to give security for costs the security shall be given in such manner, at such times, and on such terms (if any), as the Court may direct.

[E.r. 2]

Saving for statutory provision

3. This Order is without prejudice to the provisions of any statutory provision which empowers the Court to require security to be given for the costs of any proceedings.

[E.r. 3]

ORDER 24

DISCOVERY AND INSPECTION OF DOCUMENTS

Order for discovery

1.—(1) Subject to the provisions of this rule and of rules 2 and 7, the Court may order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party.

(2) An order under this rule may be limited to such documents or classes of document only, or to such only of the matters in question in the cause or matter, as may be specified in the order.

[E.r. 3]

Order for determination of issue, etc., before discovery

2. Where on an application for an order under rule 1 it appears to the Court that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the Court may order that that issue or question be determined first.

[E.r. 4]

Form of list and affidavit

3.—(1) A list of documents made in compliance with an order under rule 1 must be in Form No. 22 in Appendix A, and must enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.

(2) If it is desired to claim that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit made as aforesaid verifying a list of documents must be in Form No. 23 in Appendix A.

[E.r. 5]

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Defendant entitled to copy of co-defendant's list

4.—(1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under any of the foregoing rules of this Order on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counterclaim by any other defendant to the counterclaim.

(2) A party required by virtue of paragraph (1) to supply a copy of a list of documents must supply it free of charge on a request made by the party entitled to it.

(3) Where in an action begun by originating summons the Court makes an order under rule 1 requiring a defendant to the action to serve a list of documents on the plaintiff, it may also order him to supply any other defendant to the action with a copy of that list.

(4) In this rule “list of documents” includes an affidavit verifying a list of documents.

[E.r. 6]

Order for discovery of particular documents

5.—(1) Subject to rule 7, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it.

(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 1.

(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

[E.r. 7]

Application under section 31 or 32(1) of Administration of Justice Act 1970

6.—(1) An application for an order under section 31 of the Administration of Justice Act 1970⁽¹⁸⁾ for the disclosure of documents before the commencement of proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the summons.

(2) An application after the commencement of proceedings for an order under section 32(1) of the said Act for the disclosure of documents by a person who is not a party to the proceedings shall be made by summons, which must be served on that person personally and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by an affidavit which must—

- (a) in the case of a summons under paragraph (1), state the grounds on which it is alleged that the applicant and the person against whom the order is sought are likely to be parties to subsequent proceedings in the High Court in which a claim for personal injuries is likely to be made;
- (b) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise out of a

(18) 1970 c. 31

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claim for personal injuries made or likely to be made in the proceedings and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power.

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order under the said section 31 or 32(1) for the disclosure of documents may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just, and shall require the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order are, or at any time have been, in his possession, custody or power and, if not then in his possession, custody or power, when he parted with them and what has become of them.

(6) No person shall be compelled by virtue of such an order to produce any documents which he could not be compelled to produce—

- (a) in the case of a summons under paragraph (1), if the subsequent proceedings had already been begun, or
- (b) in the case of a summons under paragraph (2), if he had been served with a writ of subpoena duces tecum to produce the documents at the trial.

(7) In this rule “a claim for personal injuries” means a claim in respect of personal injuries to a person or in respect of a person's death.

(8) For the purposes of rules 9 and 10 an application for an order under the said section 31 or 32(1) shall be treated as a cause or matter between the applicant and the person against whom the order is sought.

[E.r. 7A]

Discovery to be ordered only if necessary

7. On the hearing of an application for an order under rule 1, the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

[E.r. 8]

Inspection of documents referred to in list

8. A party who has served a list of documents on any other party, in compliance with an order under rule 1, must allow the other party to inspect the documents referred to in the list (other than any which he objects to produce) and to take copies thereof and, accordingly, he must when he serves the list on the other party also serve on him a notice stating a time within 7 days after the service thereof at which the said documents may be inspected at a place specified in the notice.

[E.r. 9]

Inspection of documents referred to in pleadings and affidavits

9.—(1) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings or affidavits reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies thereof.

(2) The party on whom a notice is served under paragraph (1) must, within 4 days after service of the notice, serve on the party giving the notice a notice stating a time within 7 days after the service

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thereof at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice, and stating which (if any) of the documents he objects to produce and on what grounds.

[E.r. 10]

Order for production for inspection

10.—(1) If a party who is required by rule 8 to serve such a notice as is therein mentioned or who is served with a notice under rule 9(1)—

- (a) fails to serve a notice under rule 8 or, as the case may be, rule 9(2); or
- (b) objects to produce any document for inspection, or
- (c) offers inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or, as the case may be, there,

then, subject to rule 12(1), the Court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

(2) Without prejudice to paragraph (1), but subject to rule 12(1), the Court may, on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.

(3) An application for an order under paragraph (2) must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power of the other party and that they relate to a matter in question in the cause or matter.

[E.r. 11]

Order for production to Court

11. At any stage of the proceedings in any cause or matter the Court may, subject to rule 12(1), order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the cause or matter and the Court may deal with the document when produced in such manner as it thinks fit.

[E.r. 12]

Production to be ordered only if necessary, etc.

12.—(1) No order for the production of any documents for inspection or to the Court shall be made under any of the foregoing rules unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(2) Where on an application under this Order for production of any document for inspection or to the Court privilege from such production is claimed or objection is made to such production on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

[E.r. 13]

Production of business books

13.—(1) Where production of any business books for inspection is applied for under any of the foregoing rules, the Court may, instead of ordering production of the original books for inspection,

order a copy of any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books.

(2) Any such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations.

(3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the Court may order production of the book from which the copy was made.

[E.r. 14]

Document disclosure of which would be injurious to public interest: saving

14. The foregoing provisions of this Order shall be without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

[E.r. 15]

Failure to comply with requirement for discovery, etc.

15.—(1) If any party who is required by any of the foregoing rules, or by any order made thereunder, to make discovery of documents or to produce any documents for the purpose of inspection or any other purpose fails to comply with any provision of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with any such provision, to rule 10(1), the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) If any party against whom an order for discovery or production of documents is made fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal.

(3) Service on a party's solicitor of an order for discovery or production of documents made against that party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom such an order made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

[E.r. 16]

Revocation and variation of orders

16. Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

[E.r. 17]

ORDER 25

[No Order made]

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ORDER 26

INTERROGATORIES

Discovery by interrogatories

1.—(1) A party to any cause or matter may apply to the Court for an order—

- (a) giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter, and
- (b) requiring that other party to answer the interrogatories on affidavit within such period as may be specified in the order.

(2) A copy of the proposed interrogatories must be served with the summons by which the application for such leave is made.

(3) On the hearing of an application under this rule, the Court shall give leave as to such only of the interrogatories as it considers necessary either for disposing fairly of the cause or matter or for saving costs; and deciding whether to give leave the Court shall take into account any offer made by the party to be interrogated to give particulars or to make admissions or to produce documents relating to any matter in question.

(4) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) shall be disallowed notwithstanding that it might be admissible in oral cross-examination of a witness.

[E.r. 1]

Interrogatories where party is a body of persons

2. Where a party to a cause or matter is a body of persons, whether corporate or unincorporate, being a body which is empowered by law to sue or to be sued whether in its own name or in the name of an officer or other person, the Court may, on the application of any other party, make an order allowing him to serve interrogatories on such officer or member of the body as may be specified in the order.

[E.r. 2]

Statement as to party etc., required to answer

3. Where interrogatories are to be served on two or more parties or are required to be answered by an agent or servant of a party, a note at the end of the interrogatories shall state which of the interrogatories each party or, as the case may be, an agent or servant is required to answer, and which agent or servant.

[E.r. 3]

Objection to answer on ground of privilege

4. Where a person objects to answering any interrogatory on the ground of privilege he may take the objection in his affidavit in answer.

[E.r. 4]

Insufficient answer

5. If any person on whom interrogatories have been served answers any of them insufficiently, the Court may make an order requiring him to make a further answer, and either by affidavit or on oral examination as the Court may direct.

[E.r. 5]

Failure to comply with order

6.—(1) If a party against whom an order is made under rule 1 or 5 fails to comply with it, the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) If a party against whom an order is made under rule 1 or 5 fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal.

(3) Service on a party's solicitor of an order to answer interrogatories made against the party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom an order to answer interrogatories made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

[E.r. 6]

Use of answers to interrogatories at trial

7. A party may put in evidence at the trial of a cause or matter, or of any issue therein-, some only of the answers to interrogatories, or part only of such an answer, without putting in evidence the other answers or, as the case may be, the whole of that answer, but the Court may look at the whole of the answers and if of opinion that any other answer or other part of an answer is so connected with an answer or part thereof used in evidence that the one ought not to be so used without the other, the Court may direct that that other answer or part shall be put in evidence.

[E.r. 7]

Revocation and variation of orders

8. Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

[E.r. 8]

ORDER 27

ADMISSIONS

Admission of case of other party

1. Without prejudice to Order 18, rule 13, a party to a cause or matter may give notice, by his pleading or otherwise in writing, that he admits the whole or any part of the case of any other party.

[E.r. 1]

Notice to admit facts

2.—(1) A party to a cause or matter may not later than 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit, for the purpose of that cause or matter only, the facts specified in the notice.

(2) An admission made in compliance with a notice under this rule shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of

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which it was made or in favour of any person other than the person by whom the notice was given, and the Court may at any time allow a party to amend or withdraw an admission so made by him on such terms as may be just.

[E.r. 2]

Judgment on admission of facts

3. Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just.

An application for an order under this rule may be made by motion or summons.

[E.r. 3]

Admission and production of documents specified in list of documents

4.—(1) Subject to paragraph (2) and without prejudice to the right of a party to object to the admission in evidence of any document, a party who receives or who is served with a list of documents in pursuance of any provision of Order 24 shall, unless the Court otherwise orders, be deemed to admit—

- (a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been, and
- (b) that any document described therein as a copy is a true copy.

This paragraph does not apply to a document the authenticity of which the party has denied in his pleading.

(2) If before the expiration of 21 days after inspection of the documents specified in a list of documents or after the time limited for inspection of those documents expires, whichever is the later, the party who receives or who is served with the list serves on the party whose list it is a notice stating, in relation to any document specified therein, that he does not admit the authenticity of that document and requires it to be proved at the trial, he shall not be deemed to make any admission in relation to that document under paragraph (1).

(3) A party to a cause or matter by whom a list of documents is served on any other party in pursuance of any provision of Order 24 shall be deemed to have been served by that other party with a notice requiring him to produce at the trial of the cause or matter such of the documents specified in the list as are in his possession, custody or power.

(4) The foregoing provisions of this rule apply in relation to an affidavit made in compliance with an order under Order 24, rule 5, as they apply in relation to a list of documents served in pursuance of any provision of that Order.

[E.r. 4]

Notices to admit or produce documents

5.—(1) Except where rule 4(1) applies, a party to a cause or matter may within 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit the authenticity of the documents specified in the notice.

(2) If a party on whom a notice under paragraph (1) is served desires to challenge the authenticity of any document therein specified he must, within 21 days after service of the notice, serve on the

party by whom it was given a notice stating that he does not admit the authenticity of the document and requires it to be proved at the trial.

(3) A party who fails to give a notice of non-admission in accordance with paragraph (2) in relation to any document shall be deemed to have admitted the authenticity of that document unless the Court otherwise orders.

(4) Except where rule 4(3) applies, a party to a cause or matter may serve on any other party a notice requiring him to produce the documents specified in the notice at the trial of the cause or matter.

[E.r. 5]

ORDER 28

ORIGINATING SUMMONS PROCEDURE

Application

1. The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these Rules or by or under any statutory provision; and, subject as aforesaid, Order 32, rule 5, shall apply in relation to originating summonses as it applies in relation to other summonses.

[E.r. 1]

Fixing times for attendance of parties before Court

2.—(1) Where, in the case of an originating summons to which appearance is required to be entered, any defendant served with the summons has entered, or has within the time limited for appearing failed to enter, an appearance, the plaintiff may obtain an appointment for the attendance of the parties before the Court for the hearing of the summons, and a day and time for their attendance shall be fixed by a notice (in Form No. 10 in Appendix A) sealed by an officer of the appropriate office.

(2) A day and time for the attendance of the parties before the Court for the hearing of an originating summons to which appearance is not required, or for the hearing of an ex parte originating summons, may be fixed on the application of the plaintiff or applicant, as the case may be.

(3) Where, in respect of an originating summons to which an appearance is not required, an application for a day to be fixed under paragraph (2) is not made until after the originating summons has been issued, a day and time for the attendance of the parties before the Court for the hearing of the summons shall be fixed by a notice issued in accordance with the provisions of paragraph (1).

(4) Where a plaintiff fails to apply for an appointment under paragraph (1), any defendant may, with the leave of the Court, obtain an appointment in accordance with that paragraph provided that he has entered an appearance.

[E.r. 2]

Notice of first hearing, etc.

3.—(1) Not less than 4 clear days before the day fixed under rule 2 for the attendance of the parties before the Court for the hearing of an originating summons to which appearance is required to be entered, the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party who has entered an appearance and, if the first-mentioned party is a defendant, on the plaintiff.

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(2) Not less than 4 clear days before the day fixed under rule 2 for the hearing of an originating summons to which appearance is not required, the plaintiff must serve the summons on every defendant and, where the day for the hearing is fixed after the summons is issued, a copy of the notice fixing it.

(3) Where the plaintiff intends to adduce evidence in support of an originating summons at the first hearing thereof he must do so by affidavit and, not less than 4 clear days before the hearing, serve a copy thereof on every defendant who has entered an appearance or, if the summons is one to which appearance is not required, on every defendant who has been served with the summons.

(4) Not less than 4 clear days before the day fixed for the hearing of an ex parte originating summons the applicant must file an affidavit in support of the summons.

[E.r. 3]

Directions, etc., by Court

4.—(1) The Court by whom an originating summons is heard may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require; but where the Court makes an order under this paragraph against a defendant who does not appear at the hearing, the order may be varied or revoked by a subsequent order of the Court on such terms as it thinks just.

(2) Unless on the first hearing of an originating summons the Court disposes of the summons altogether or orders the cause or matter begun by it to be remitted to a county court in accordance with the provisions of section 31 of the Act, or makes an order under rule 8, the Court shall give such directions as to further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.

(3) Without prejudice to the generality of paragraph (2); the Court shall, at as early a stage of the proceedings on the summons as appears to it to be practicable consider whether there is or may be a dispute as to fact and whether the just, expeditious and economical disposal of the proceedings can accordingly best be secured by hearing the summons on oral evidence or mainly on oral evidence and, if it thinks fit, may order that no further evidence shall be filed and that the summons shall be heard on oral evidence or partly on oral evidence, and partly on affidavit evidence, with or without cross-examination of any of the deponents, as it may direct.

(4) Without prejudice to the generality of paragraph (2), and subject to paragraph (3), the Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination.

[E.r. 4]

Adjournment of summons

5.—(1) The hearing of the summons by the Court may (if necessary) be adjourned from time to time, either generally or to a particular date, as may be appropriate, and the powers of the Court under rule 4 may be exercised at any resumed hearing.

(2) If the hearing of the summons is adjourned generally, the party on whose application the day for its hearing; was fixed under rule 2 may restore it to the list on 2 days' notice to all the other parties (except a defendant who has failed to enter an appearance or, if the summons is one to which an appearance is not required, has not been served with the summons), and any of those parties may restore it with the leave of the Court.

[E.r. 5]

Applications affecting party in default of appearance

6. Where in a cause or matter begun by originating summons an application is made to the Court for an order affecting a party who has failed to enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

[E.r. 6]

Counterclaim by defendant

7.—(1) A defendant to an action begun by originating summons who has entered an appearance to the summons and who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter (whenever and however arising) may make a counterclaim in the action in respect of that matter instead of bringing a separate action.

(2) A defendant who wishes to make a counterclaim under this rule must at the first or any resumed hearing of the originating summons by the Court but, in any case, at as early a stage in the proceedings as is practicable, inform the Court of the nature of his claim and, without prejudice to the powers of the Court under paragraph (3), the claim shall be made in such manner as the Court may direct under rule 4 or rule 8.

(3) If it appears on the application of a plaintiff against whom a counterclaim is made under this rule that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

[E.r. 7]

Continuation of proceedings as if cause or matter begun by writ

8.—(1) Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that any affidavit shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

(2) This rule applies notwithstanding that the cause or matter in question could not have been begun by writ.

(3) Any reference in these Rules to an action begun by writ shall, unless the context otherwise requires, be construed as including a reference to a cause or matter proceedings in which are ordered under this rule to continue as if the cause or matter had been so begun.

[E.r. 8]

Order for hearing or trial

9.—(1) Except where the Court disposes of a cause or matter begun by originating summons in chambers or orders it to be remitted to a county court in accordance with the provisions of section 31 of the Act or makes an order in relation to it under rule 8 or some other provision of these rules, the Court shall, on being satisfied that the cause or matter is ready for determination, make an order for the hearing or trial thereof in accordance with this rule.

(2) Where the cause or matter is proceeding in the Chancery Division, the Court shall make such order as to the hearing of the cause or matter in court as may be appropriate; and where it makes such an order, it shall cause the originating summons, a copy thereof and every other document that will be required by the judge to be sent to the proper officer, who shall set down the cause or matter for hearing.

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(3) The Court shall by order determine the mode of the trial, but any such order may be varied by a subsequent order of the Court made at or before the trial.

(4) Order 33, rule 4(2), and Order 34, rules 1 to 7, shall apply in relation to a cause or matter in the Queen's Bench Division begun by originating summons and to an order made therein under this rule as they apply in relation to an action in that Division begun by writ and to an order made therein under the said rule 4 and shall have effect accordingly with the necessary modifications.

[E.r. 9]

Failure to prosecute proceedings with despatch

10.—(1) If the plaintiff in a cause or matter begun by originating summons makes default in complying with any order or direction of the Court as to the conduct of the proceedings, or if the Court is satisfied that the plaintiff in a cause or matter so begun is not prosecuting the proceedings with due despatch, the Court may order the cause or matter to be dismissed or may make such other order as may be just.

(2) Paragraph (1) shall, with any necessary modifications, apply in relation to a defendant by whom a counterclaim is made under rule 7 as it applies in relation to a plaintiff.

(3) Where, by virtue of an order made under rule 8, proceedings in a cause or matter begun by originating summons are to continue as if the cause or matter had been begun by writ, the foregoing provisions of this rule shall not apply in relation to the cause or matter after the making of the order.

[E.r. 10]

Abatement. etc., of action

11. Order 34, rule 8 shall apply in relation to an action begun by originating summons as it applies in relation to an action begun by writ.

[E.r. 11]

ORDER 29

INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, INTERIM PAYMENTS, ETC.

I. INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, ETC.

Application for injunction

1.—(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be made ex parte on affidavit but, except as aforesaid, such application must be made by motion or summons.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

[E.r. 1]

Detention, preservation, etc., of subject-matter of cause or matter

2.—(1) On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into court or otherwise secured.

(4) An order under this rule may be made on such terms, if any, as the Court thinks just.

(5) An application for an order under this rule must be made by summons.

(6) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he enters an appearance.

[E.r. 2]

Delivery up of goods under s.4 of Torts (Interference with Goods) Act 1977

3.—(1) Without prejudice to rule 2, the Court may, on the application of any party to a cause or matter, make an order under section 4 of the Torts (Interference with Goods) Act 1977⁽¹⁹⁾ for the delivery up of any goods which are the subject-matter of the cause or matter or as to which any question may arise therein.

(2) Paragraphs (2) and (3) of rule 1 shall have effect in relation to an application for such an order as they have effect in relation to an application for the grant of an injunction.

[E.r. 2A]

Power to order samples to be taken, etc.

4.—(1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any cause or matter, the Court may, on the application of a party to the cause or matter, and on such terms, if any, as it thinks just, by order authorise or require any sample to be taken of any property which is the subject-matter of the cause or matter or as to which any question may arise therein, any observation to be made on such property or any experiment to be tried on or with such property.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

[E.r. 3]

Sale of perishable property etc.

5.—(1) The Court may, on the application of any party to a cause or matter, make an order for the sale by such person, in such manner and on such terms (if any) as may be specified in the order of any property (other than land) which is the subject-matter of the cause or matter or as to which any

(19) 1977 c. 32

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question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any other good reason it is desirable to sell forthwith.

In this paragraph “land” includes any interest in, or right over, land.

(2) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

[E.r. 4]

Order for early trial

6. Where on the hearing of an application, made before the trial of a cause or matter, for an injunction or the appointment of a receiver or an order under rule 2, 4 or 5 it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits thereof for the purposes of the application, the Court may make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires.

Where the Court makes an order for early trial it shall by the order determine the place and mode of the trial.

[E.r. 5]

Recovery of personal property subject to lien, etc.

7. Where the plaintiff, or the defendant by way of counterclaim, claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleadings (if any) or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum (if any) for interest and costs as the Court may direct and that, upon such payment being made, the property claimed be given up to the party claiming it.

[E.r. 6]

Directions

8. Where an application is made under any of the foregoing provisions of this Order, the Court may give directions as to the further proceedings in the cause or matter.

[E.r. 7]

Inspection, etc., of property under section 21 of Administration of Justice Act 1969 or section 32(2) of Administration of Justice Act 1970

9.—(1) An application for an order under section 21(1) of the Administration of Justice Act 1969(20) in respect of property which may become the subject-matter of subsequent proceedings in the High Court or as to which any question may arise in any such proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the summons.

(2) An application after the commencement of proceedings for an order under section 32(2) of the Administration of Justice Act 1970(21) in respect of property which is not the property of or in the possession of any party to the proceedings shall be made by summons, which must be served

(20) 1969 c. 58

(21) 1970.c. 31

oil the person against whom the order is sought personally and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by affidavit which must specify or describe the property in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings or subsequent proceedings, that it is property which is or may become the subject-matter of the proceedings or as to which any question arises or may arise in the proceedings.

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order made under the said section 21 or 32(2) may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just.

(6) No such order shall be made if it appears to the Court—

(a) that compliance with the order, if made, would result in the disclosure of information relating to a secret process, discovery or invention not in issue in" the proceedings, and

(b) that the application would have been refused on that ground if—

(i) in the case of a summons under paragraph (1), the subsequent proceedings had already been begun, or

(ii) in the case of a summons under paragraph (2); the person against whom the order is sought were a party to the proceedings.

[E.r. 7A]

Allowance of income of property pendente lite

10. Where any real or personal property forms the subject-matter of any proceedings, and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all of such parties.

[E.r. 8]

II. INTERIM PAYMENTS IN ACTIONS FOR PERSONAL INJURIES

Interpretation of Part II

11. In this Part of this Order—

“interim payment”, in relation to a defendant, means a payment on account of any damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death which that defendant may be held liable to pay to or for the benefit of the plaintiff;

any reference to the plaintiff or defendant includes a reference to any person who for the purpose of the proceedings, acts as next friend to the plaintiff or guardian of the defendant.

[E.r. 9]

Application for interim payment

12. In an action for personal injuries the plaintiff may, at any time after the writ has been served on a defendant and the time limited for him to appear has expired, apply to the Court for an order requiring that defendant to make an interim payment.

[E.r. 10]

Manner in which application under rule 12 must be made

13.—(1) An application under rule 12 must be made by summons, stating the grounds on which the application is made, and be supported by an affidavit, which must—

- (a) verify the special damages, if any, claimed by the plaintiff up to the date of the application;
- (b) exhibit the hospital and medical reports, if any, relied upon by the plaintiff in support of the application; and
- (c) if the plaintiff's claim is made under the Fatal Accidents (Northern Ireland) Order 1977⁽²²⁾ contain the particulars mentioned in Article 4 of the Order.

(2) The summons and a copy of the affidavit in support and any exhibit referred to therein must be served on the defendant against whom the order is sought not less than 10 clear days before the return day.

(3) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown by reason of a change of circumstances.

[E.r. 11]

Order for interim payment

14.—(1) If, on the hearing of an application under rule 12, the Court is satisfied—

- (a) that the defendant against whom the order is sought (in this paragraph referred to as “the respondent”) has admitted liability for the plaintiff's claim; or
- (b) that the plaintiff has obtained judgment against the respondent for damages to be assessed; or
- (c) that, if the action proceeded to trial, the plaintiff would succeed in the action on the question of liability without any substantial reduction of the damages for fault on his part or on the part of any person in respect of whose injury or death the plaintiff's claim arises and would obtain judgment for damages against the respondent or, where there are two or more defendants, against any of them,

the Court may, if it thinks fit and subject to paragraph (2), order the respondent to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff.

(2) No order shall be made under paragraph (1) if it appears to the Court that the defendant, or, if there are two or more defendants, any of them, is not a person falling within one of the following categories, namely—

- (a) a person who is insured in respect of the plaintiff's claim;
- (b) a public authority;
- (c) a person whose means and resources are such as to enable him to make the interim payment.

(3) Subject to Order 80, rule 10, the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into court, and where the amount is paid into court, the Court may, on the ex parte application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.

(4) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.

(22) S.I. 1977 No. 1251 (N.I. 18)

[E.r. 12]

Directions on application under rule 12

15.—(1) Where an application is made under rule 12, the Court may give directions as to the further conduct of the action.

[E.r. 13]

Non-disclosure of order for interim payment

16. The fact that an order has been made under rule 14 shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing of the action or of any question or issue as to liability or damages until all questions of liability and the amount of the damages have been decided.

[E.r. 14]

Payment into court

17. Where, after making an interim payment pursuant to an order under rule 14, a defendant pays a sum of money into court under Order 22, rule 1, the notice of payment must state that the defendant has taken into account the interim payment.

[E.r. 15]

Adjustment on final judgment or order

18. Where a defendant has made an interim payment pursuant to an order under rule 13, the Court may, on giving or making a final judgment or order determining that defendant's liability to the plaintiff in the action, make any such order with respect to the interim payment as may be necessary for giving effect to the determination and in particular—

- (a) an order for the repayment by the plaintiff of any sum by which the interim payment exceeds the amount which that defendant is liable to pay the plaintiff, or
- (b) an order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

[E.r. 16]

Interim order on counterclaim

19. A defendant who makes a counterclaim for damages in respect of personal injuries to himself or any other person or in respect of a person's death may apply for an order requiring the plaintiff to make an interim payment and this Part of this Order shall apply accordingly with the necessary modifications.

[E.r. 17]

III. INTERIM PAYMENTS IN ACTIONS FOR POSSESSION OF LAND

Order for interim payment

20.—(1) Where in an action in which there is a claim for possession of land it appears to the Court that, in the event of a final judgment or order being given or made in favour of the plaintiff, the defendant would be held liable to pay to the plaintiff a sum of money in respect of the defendant's

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use and occupation of the land during the pendency of the action, the Court may, on the application of the plaintiff, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make a payment (in this rule referred to as an “interim payment”) on account of that sum.

(2) No such order for an interim payment shall be made unless it appears to the Court that, even if a final judgment or order were given or made in favour of the defendant, he would still be under an obligation to pay the plaintiff for his use and occupation of the land, whether by way of rent, mesne profits or otherwise.

(3) An order under this rule may be for the payment of—

- (a) a sum not exceeding the amount which, if a final judgment or order were given or made in favour of the defendant, would be payable by him in respect of his use and occupation of the land up to the date of the order, or
- (b) periodical payments during the pendency of the action, or
- (c) a combination of both.

(4) Subject to Order 80, rule 10 the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into court; and when the amount is paid into court, the Court may, on the ex parte application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.

[E.r. 18]

Application for interim payment

21.—(1) Subject to paragraph (2), an application for an order under rule 20 may be made—

- (a) in an action begun by writ, by summons issued at any time after a defence has been served or after the time for serving a defence has expired;
- (b) in an action begun by originating summons, in the originating summons or by summons returnable on or after the first hearing of the originating summons.

(2) A plaintiff who applies for summary judgment under Order 14, rule 2, may include in his summons an application for an order under rule 20 in the event of the defendant's being given leave to defend.

(3) An application for an order under rule 20 shall be supported by an affidavit, which must—

- (i) verify the material facts on which the application is based;
- (ii) state first the amount, expressed as a sum of money or a periodic payment, which, (if a final judgment or order were made or given in favour of the plaintiff), the defendant would, in the belief of the deponent, be held liable to pay in respect of his use and occupation of the land during the pendency of the action, and, secondly, whether the liability arises by virtue of a lease or tenancy agreement or otherwise;
- (iii) state that, in the belief of the deponent, even if a final judgment or order were given or made in favour of the defendant, he would still be under an obligation to pay the plaintiff for use and occupation of the land during the pendency of the action;
- (iv) state the amount claimed and how it is calculated.

(4) The summons and a copy of the affidavit in support must be served on the defendant against whom the order is sought not less than 4 clear days (or, if the order is sought in a summons for summary judgment under Order 14, 10 clear days) before the return day.

(5) Notwithstanding the making or refusal of an order for interim payment, a second or subsequent application may be made upon cause shown.

(6) An order for an interim payment may, on the application of a party to the action, be varied or discharged by the Court.

[E.r. 19]

Directions on application under rule 21

22. On hearing an application under rule 21, whether or not the Court makes an order for interim payment, the Court may give directions as to the further conduct of the action.

[E.r. 20]

Interim payment in respect of counterclaim

23. A defendant who makes a counterclaim for possession of land may apply for an order requiring the plaintiff to make an interim payment and this Part of this Order shall apply accordingly with the necessary modifications.

[E.r. 21]

ORDER 30

RECEIVERS

Application for receiver and injunction

1.—(1) An application for the appointment of a receiver may be made by summons or motion.

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.

(3) Where the applicant wishes to apply for the immediate grant of such an injunction, he may do so ex parte on affidavit.

(4) The Court hearing an application under paragraph (3) may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of a summons for the appointment of the receiver and may require such a summons, returnable on such date as the Court may direct, to be issued.

[E.r. 1]

Giving of security by receiver

2.—(1) Where a judgment is given, or order made, directing the appointment of a receiver, then, unless the judgment or order otherwise directs, a person shall not be appointed receiver in accordance with the judgment or order until he has given security in accordance with this rule.

(2) Where by virtue of paragraph (1), or of any judgment or order appointing a person named therein to be receiver, a person is required to give security in accordance with this rule he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee or, if the amount for which the security is to be given does not exceed £1,000, by an undertaking.

(4) The guarantee or undertaking must be filed in the appropriate office.

[E.r. 2]

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Remuneration of receiver

3. A person appointed receiver shall be allowed such proper remuneration, if any, as may be fixed by the Court.

[E.r. 3]

Receiver's accounts

4.—(1) A receiver must submit accounts to the Court at such intervals or on such dates as the Court may direct in order that they may be passed.

(2) Unless the Court otherwise directs, each account submitted by a receiver must be accompanied by an affidavit verifying it.

(3) The receiver's account and affidavit (if any) must be left at the appropriate office, and the plaintiff or party having the conduct of the cause or matter must thereupon obtain an appointment for the purpose of passing such account.

(4) The passing of a receiver's account must be certified by a master.

[E.r. 4]

Payment of balance, etc., by receiver

5. The days on which a receiver must pay into court the amounts shown by his account as due from him, or such part thereof as the Court may certify as proper to be paid in by him, shall be fixed by the Court.

[E.r. 5]

Default by receiver

6.—(1) Where a receiver fails to attend for the passing of any account of his, or fails to submit any account, make any affidavit or do any other thing which he is required to submit, make or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend in chambers to show cause for the failure, and the Court may, either in chambers or after adjournment into court, give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to paragraph (1), where a receiver fails to attend for the passing of any account of his or fails to submit any account or fails to pay into court on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay any such sum into court, charge him with interest at the rate of £5 per cent. per annum on that sum while in his possession as receiver.

[E.r. 6]

ORDER 31

SALES, ETC. OF LAND BY ORDER OF COURT: CONVEYANCING COUNSEL TO THE COURT

I. SALES, ETC. OF LAND BY ORDER OF COURT

Power to order sale of land

1. Where in any cause or matter in the Chancery Division relating to any land it appears necessary or expedient for the purposes of the cause or matter that the land or any part thereof should be sold, the Court may order that land or part to be sold, and any party bound by the order and in possession of that land or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.

In this Order “land” includes any interest in, or right over, land.

[E.r. 1]

Manner of carrying out sale

2.—(1) Where an order is made, whether in court or in chambers, directing any land to be sold, the Court may permit the party or person having the conduct of the sale to sell the land in such manner as he thinks fit, or may direct that the land be sold in such manner as the Court may either by the order or under paragraph (4) direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the Court shall direct.

(2) The party entitled to prosecute the order must, subject to paragraph 3, take out a summons to proceed with the order.

(3) Where an order for sale contains directions with regard to effecting the sale, the party entitled to prosecute the order shall not take out a summons under paragraph (2) unless and until he requires the further directions of the Court.

(4) On the hearing of the summons the Court may give such directions as it thinks fit for the purpose of effecting the sale, including, without prejudice to the generality of the foregoing words, directions—

- (a) appointing the party or person who is to have the conduct of the sale;
- (b) fixing the manner of sale, whether by contract conditional on the approval of the Court, private treaty, public auction, tender or some other manner;
- (c) fixing a reserve or minimum price;
- (d) requiring payment of the purchase money into court or to trustees or other persons;
- (e) for settling the particulars and conditions of sale;
- (f) for obtaining evidence of the value of the property;
- (g) fixing the security (if any) to be given by the auctioneer, if the sale is to be by public auction, and the remuneration to be allowed him;
- (h) requiring an abstract of the title to be referred to conveyancing counsel to the Court or some other conveyancing counsel for his opinion thereon and to settle the particulars and conditions of sale.

[E.r. 2]

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Certifying result of sale

3.—(1) If either the Court has directed payment of the purchase money into court or the Court so directs, the result of a sale by order of the Court must be certified—

(a) in the case of a sale by public auction, by the auctioneer who conducted the sale, and

(b) in any other case, by the solicitor of the party or person having the conduct of the sale;

and the Court may require the certificate to be verified by the affidavit of the auctioneer or solicitor, as the case may be.

(2) The solicitor of the party or person having the conduct of the sale must file the certificate and affidavit (if any) at the Chancery Office.

[E.r. 3]

Mortgage, exchange or partition under order of the Court

4. Rules 2 and 3 shall, so far as applicable and with the necessary modifications, apply in relation to the mortgage, exchange or partition of any land under an order of the Court as they apply in relation to the sale of any land under such an order.

[E.r. 4]

II. CONVEYANCING COUNSEL TO THE COURT

Reference of matters to conveyancing counsel to Court

5. The Court may refer to the conveyancing counsel to the Court—

(a) any matter relating to the investigation of the title to any property with a view to an investment of money in the purchase or on mortgage thereof, or with a view to the sale thereof,

(b) any matter relating to the settlement of a draft of a conveyance, mortgage, settlement or other instrument, and

(c) any other matter it thinks fit,

and may act upon his opinion in the matter referred.

[E.r. 5]

Objection to conveyancing counsel's opinion

6. Any party may object to the opinion given by any conveyancing counsel on a reference under rule 5, and if he does so the point in dispute shall be determined by the judge either in chambers or in court as he thinks fit.

[E.r. 6]

ORDER 32

APPLICATIONS AND PROCEEDINGS IN CHAMBERS

Powers of judge in chambers

1. A judge of the High Court may exercise in chambers all or any part of the jurisdiction vested in the High Court in all such causes and matters and in all such proceedings in any causes or matters

as may be directed or authorised by these Rules or by or in pursuance of any statutory provision to be heard in chambers.

Applications which must be made in chambers

2. An application must be made in chambers where—
 - (a) these Rules or any statutory provision require the application to be made in chambers or by summons; or
 - (b) the Court directs that the application be made in chambers; or
 - (c) the application is interlocutory and is not required or authorised by these Rules to be made by motion, except an application for an injunction or an application made in court at the trial or hearing of a cause or matter.

Mode of making application

3.—(1) Every application in chambers not made ex parte must be made by summons. A summons, other than an originating summons, shall be in Form No. 28 in Appendix A.

- (2) Any application made ex parte may be directed to be made by summons.

[E.r. 1]

Issue of summons

4.—(1) Issue of a summons by which an application in chambers is to be made takes place on its being sealed by an officer of the appropriate office.

- (2) A summons may not be amended after issue without the leave of the Court.
- (3) In this rule “the appropriate office” means—
 - (a) in relation to a summons in a cause or matter in The Chancery Division, other than a summons in proceedings to which Order 102 applies, the Chancery Office;
 - (b) in relation to a summons in proceedings to which Order 102 applies, The Bankruptcy and Companies Office;
 - (c) in relation to a summons in a cause or matter in the Family Division the Probate and Matrimonial Office or the Office of Care and Protection, as the case may be;
 - (d) in relation to a summons in any other cause or matter, the Central Office.

[E.r. 2]

Service of summons

5. A summons asking only for the extension or abridgment of any period of time may be served on the day before the day specified in the summons for the hearing thereof, but except as aforesaid and unless the Court otherwise orders or any of these Rules otherwise provides, a summons must be served on every other party not less than 2 clear days before the day so specified.

[E.r. 3]

Adjournment of hearing

6.—(1) The hearing of a summons may be adjourned from time to time, either generally or to a particular date, as may be appropriate.

(2) If the hearing is adjourned generally, the party by whom the summons was taken out may restore it to the list on 2 clear days' notice to all the other parties on whom the summons was served.

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[E.r. 4]

Proceeding in absence of party failing to attend

7.—(1) Where any party to a summons fails to attend on the first or any resumed hearing thereof, the Court may proceed in his absence if, having regard to the nature of the application, it thinks it expedient so to do.

(2) Before proceeding in the absence of any party the Court may require to be satisfied that the summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.

(3) Where the Court hearing a summons proceeded in the absence of a party, then, provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may re-hear the summons.

(4) Where an application made by summons has been dismissed without a hearing by reason of the failure of the party who took out the summons to attend the hearing, the Court, if satisfied that it is just to do so, may allow the summons to be restored to the list.

[E.r. 5]

Order made ex parte may be set aside

8. The Court may set aside an order made ex parte.

[E.r. 6]

Subpoena for attendance of witness

9.—(1) A writ of subpoena ad testificandum or a writ of subpoena duces tecum to compel the attendance of a witness for the purpose of proceedings in chambers may be issued out of the appropriate office, if the party who desires the attendance of the witness produces a note from a judge or master authorising the issue of the writ.

(2) Any master may give such a note or may direct that the application for it be made to the judge before whom the proceedings are to be heard.

[E.r. 7]

Application to make order of House of Lords order of High Court

10. An application to make an order of the House of Lords an order of the High Court may be made ex parte by affidavit to a master.

[E.r. 10]

Jurisdiction of masters

11.—(1) A master shall have power to transact all such business and exercise all such jurisdiction as may be transacted and exercised by a judge in chambers, except in respect of the following matters and proceedings, that is to say—

- (a) matters relating to criminal proceedings;
- (b) matters relating to the liberty of the subject;
- (c) applications to review any taxation of costs.
- (d) applications under section 32 of the Act for leave to institute or continue legal proceedings;
- (e) applications for approval of transactions under the inherent jurisdiction of the court;

- (f) the granting of an injunction, except in the terms agreed by the parties to the proceedings in which the injunction is sought;
- (g) application to sanction a compromise, arrangement or transaction on behalf of a person under disability;
- (h) applications concerning charities;
- (i) applications under section 40 of the Trustee Act (Northern Ireland) 1958⁽²³⁾ for the appointment of a trustee in substitution for an existing trustee without his consent;
- (j) applications to authorise transactions relating to trust property under section 56 of the Trustee Act (Northern Ireland) 1958;
- (k) applications to vary trusts under section 57 of the Trustee Act (Northern Ireland) 1958;
- (l) applications by trustees to be relieved from personal liability under section 61 of the Trustee Act (Northern Ireland) 1958;
- (m) applications under section 111(2) of the Mental Health Act (Northern Ireland) 1961⁽²⁴⁾ to bring proceedings against a person;
- (n) any other matter or proceeding which by any of these Rules or under any general or special directions of the Lord Chief Justice or, in the case of the Master (Chancery) or the Master (Bankruptcy), the Chancery Judge, is required to be heard only by a judge.

(2) Where an originating summons raises for the determination of the Court a question as to the construction of a document or a question of law, nothing in paragraph (1) shall authorise a master to determine that question.

[E.rr. 11 & 14]

Reference of matter to judge

12.—(1) A master may refer to a judge any matter which he thinks should properly be decided by a judge, and the judge may either dispose of the matter or, after or without hearing the parties, refer it back to the master, with such directions as he thinks fit.

(2) A matter referred under this rule shall, in accordance with the directions of the judge, either be listed for hearing by the judge or restored to the master's list.

[E.r. 12]

Power to direct hearing in court

13.—(1) The judge in chambers may direct that any summons, application or appeal shall be heard in court or shall be adjourned into court to be so heard if he considers that by reason of its importance or for any other reason it should be so heard.

(2) Any matter heard in court by virtue of a direction under paragraph (1) may be adjourned from court into chambers.

[E.r. 13]

Masters may summon parties, etc.

14.—(1) For the purpose of any proceedings before him, a master may

- (a) issue a summons requiring any party to the proceedings to attend before him,

⁽²³⁾ 1958 c. 23 (N.I.)

⁽²⁴⁾ 1961 c. 15 (N.I.)

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- (b) at the request of any such party, issue a summons requiring any person to attend him as a witness,
- (c) require the production of documents, and
- (d) examine any party or witness either orally or on interrogatories.

(2) A summons under paragraph (1)(b) must be served personally on the person against whom it is issued.

(3) If a person refuses or fails to obey a summons duly served on him under this rule the master may make an order requiring that person to attend before him.

[E.r. 15]

Obtaining assistance of experts

15. If the Court thinks it expedient in order to enable it better to determine any matter arising in proceedings in chambers, it may obtain the assistance of any person specially qualified to advise on that matter and may act upon his opinion.

[E.r. 16]

Adjournment into or from court

16. The hearing of any summons or other application in chambers may be adjourned from chambers into court and subsequently from court into chambers.

[E.r. 18]

Disposal of matters in chambers

17. The judge may by any judgment or order made in court in any proceedings direct that such matters (if any) in the proceedings as he may specify shall be disposed of in chambers.

[E.r. 19]

Papers for use of Court, etc.

18. The original of any document which is to be used in evidence in proceedings in chambers must, if it is available, be brought in, and copies of any such document or of any part thereof shall not be made unless the Court directs that copies of that document or part be supplied for the use of the Court or be given to the other parties to the proceedings.

[E.r. 21]