

1966. No. 149

[NC]

**SUPREME COURT, NORTHERN IRELAND  
PROCEDURE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

payment of moneys secured by the mortgage or charge;

sale;

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

redemption;

reconveyance;

delivery of possession by the mortgagee."

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

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

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

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

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

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

Dated 29th June, 1966.

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

## SCHEDULE I

Rule 1

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

## ORDER XIV

## Summary Judgment

*Application by plaintiff for summary judgment*

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

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

- (a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or
  - (b) a claim by the plaintiff based on an allegation of fraud.
- (3) No application against the Crown shall be made under this rule.

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

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

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

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

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

- (a) an officer duly authorised by the Attorney General of Northern Ireland or by the Government department concerned; or
- (b) the solicitor acting for the Crown; or
- (c) an officer duly authorised by the solicitor acting for the Crown;

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

*Judgment for plaintiff*

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

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

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

#### *Leave to defend*

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

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

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

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

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

#### *Application for summary judgment on counterclaim*

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

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

- (a) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;
- (b) the words in rule 3(2) “any counterclaim made or raised by the defendant in” shall be omitted; and
- (c) the reference in rule 4(3) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.

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

*Directions***6.** Where the Court or a Judge—

- (a) orders that a defendant or a plaintiff have leave (whether conditional or unconditional) to defend an action or counterclaim, as the case may be, with respect to a claim or part of a claim; or
- (b) gives judgment for a plaintiff or a defendant on a claim or part of a claim but also orders that execution of the judgment be stayed pending the trial of a counterclaim or of the action, as the case may be,

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

*Right to proceed with residue of action or counterclaim*

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

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

*Judgment for delivery up of chattel*

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

*Disposal of action by consent*

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

*Setting aside judgment*

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

## SCHEDULE II

Rule 3

**Order to be inserted after Order XVI of the Rules of the Supreme Court**

## ORDER XVIA

**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 paragraphs (2) and (4), the defendant may issue a notice in Form No. 1 or 1A in Appendix B, 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 or a Judge unless the action was begun by writ and he issues the notice before delivering his defence to 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 is issued.

(4) A third party notice (including a notice issuable by virtue of rule 9) for service on the Crown may not be issued without the leave of the Court or a Judge and the application for such leave must be made by summons, and the summons must be served on the plaintiff and on the Crown.

(5) Leave to issue such a notice under paragraph (4) shall not be granted unless the Court or a Judge is satisfied that the Crown is in possession of all such information as is reasonably required as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

*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 or a Judge may direct a summons for leave to 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.

*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) delivered in the action.

(3) The appropriate office for entering an appearance to a third party notice is the Central Office.

(4) Subject to the foregoing provisions of this rule, the following provisions of these Rules, namely, Order V rules 4 and 6, Order IX (except rule 18), Order X, Order XI (except rule 8) and Order XII 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 were an action; and
- (b) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued were a defendant in that action.

*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 or a Judge either by summons 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.

(2) If no summons is served on the third party or an ex-parte application made under paragraph (1), the third party may, not earlier than 21 days after entering an appearance, by summons to be served on all the other parties to the action, apply to the Court or a Judge for directions or for an order to set aside the third party notice.

(3) On an application for directions under this rule the Court or a Judge 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 or a Judge 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 or a Judge 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 or a Judge 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 or a Judge at any time.

#### *Default of third party, etc.*

5.—(1) If a third party does not enter an appearance or, having been ordered to deliver 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, apply to the Court or a Judge for leave to enter judgment in accordance with the terms of the notice.

(2) If a third party or the defendant by whom a third party notice was issued makes default in delivering any pleading which he is ordered to deliver, the Court or a Judge 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 or a Judge necessary to do justice between the parties.

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

#### *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 or a Judge.

#### *Judgment between defendant and third party*

7.—(1) Where in any action a defendant has served a third party notice, the Court or a Judge may at or after the trial of the action or, if the action is decided otherwise than by trial, on an application by summons, 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 in an action judgment is given against a defendant and judgment is given for the defendant against a third party, execution shall not issue against the third party without the leave of the Court or a Judge until the judgment against the defendant has been satisfied.



*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), that defendant may, without leave before delivering his defence or afterwards with leave, issue and serve on that person a third party 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 of 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 “21 days after entering an appearance” there were substituted the words “21 days after service of the notice on him”.

(5) 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 where a claim for contribution or indemnity is founded solely on the tort alleged by the plaintiff.

(6) Where a defendant claiming a contribution or indemnity under paragraph (5) intends to rely on matters not pleaded by the plaintiff he must furnish particulars thereof in writing to the other parties.

*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 or a Judge 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.

*Disposal of claim for contribution or indemnity*

10. 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*

11. 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.

*Judgment in default against the Crown*

12. —(1) Except with the leave of the Court or a Judge, no judgment in default of appearance or of pleading shall be entered against the Crown in proceedings against the Crown under this Order.

(2) Except with the leave of the Court or a Judge rule 5(1)(a) shall not apply to proceedings against the Crown.

(3) An application for leave under this rule may be made by summons served not less than 7 days before the return day.

SCHEDULE III

Rule 8

**Forms to be substituted for Form No. 1 in Appendix B of the Rules of the Supreme Court**

No. 1

**Third party notice claiming contribution or indemnity or other relief or remedy**

(O. XVIA).

In the High Court of Justice in Northern Ireland

19 , No.

Division

Between **A.B.**

Plaintiff

**C.D.**

and

Defendant

**T.P.**

and

Third Party

**THIRD PARTY NOTICE**

To **T.P.** of

in the

of

Take notice that this action has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant [*here state the nature of the plaintiff's claim*] as appears from the writ of summons [*or originating summons*] a copy whereof is served herewith [*together with a copy of the statement of claim*].

The defendant claims against you [*here state the nature of the claim against the third party as for instance to be indemnified against the plaintiff's claim*]

and the costs of this action or contribution to the extent of [*one half*] of the plaintiff's claim or the following relief or remedy namely on the ground that (*state the grounds of the claim*).

And take notice that if you wish to dispute the plaintiff's claim against the defendant, or the defendant's claim against you, an appearance must be entered on your behalf within 10 days [*or if the notice is to be served out of the jurisdiction insert here the time for appearance fixed by the order giving leave to issue the notice and serve it out of the jurisdiction*] after the service of this notice on you, inclusive of the day of service, otherwise you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and your liability to [*indemnify the defendant or to contribute to the extent claimed or to stating the relief or remedy sought*] and will be bound by any judgment or decision given in the action, and the judgment may be enforced against you in accordance with Order XVIA of the Rules of the Supreme Court.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

(Signed)

Solicitor for the defendant.

#### DIRECTIONS FOR ENTERING APPEARANCE

The person served with this notice may enter an appearance by a solicitor. He may also enter an appearance personally, either by handing in the Form of Appearance in triplicate, duly completed, at the Central Office, Royal Courts of Justice (Ulster), Chichester Street, Belfast, 1, or by sending same to that office by post. The appropriate forms may be obtained at H.M. Stationery Office, Chichester Street, Belfast, 1, price 1s. 3d.

No. 1A

#### Third party notice where question or issue to be determined

(O. XVIA)

[*Title etc. as in No. 1 down to end of first paragraph*]

The defendant requires that the following question or issue, viz., [*here state the question or issue required to be determined*] should be determined not only as between the plaintiff and the defendant but also as between either or both of them and yourself.

And take notice that if you wish to be heard on the said question or issue or to dispute the defendant's liability to the plaintiff or your liability to the defendant, an appearance must be entered on your behalf within 10 days [*or if the notice is to be served out of the jurisdiction, insert here the time for appearance fixed by the order giving leave to issue the notice and serve it out of the jurisdiction*] after the service of this notice on you, inclusive of the day of service, otherwise you will be bound by any judgment or decision given in the action in so far as it is relevant to the said question or issue, and the judgment may be enforced against you in accordance with Order XVIA of the Rules of the Supreme Court.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

(Signed)

Solicitor for the defendant.

#### DIRECTIONS FOR ENTERING APPEARANCE

(*as in No. 1*)

## EXPLANATORY NOTE

*(This note is not part of the rules, but is intended to indicate their general purport.)*

A new Order XIV is substituted by rule 1 for the existing Order XIV. The range of cases in which an application for summary judgment may be made is extended and includes an application in respect of a particular claim or part of a claim included in a writ and an application by a defendant for summary judgment on a counterclaim. The new Order also extends to those actions arising out of an agreement for sale, lease or purchase of property in which the remedy of summary judgment is available in England under the English Order 86.

Order XVIA, which is inserted by rule 3, replaces Part V of Order XVI and extends the scope and practice of third party procedure. A third party notice may be issued without leave and its use is not confined to claims for "contribution or indemnity".

Rules 4, 5 and 7 make certain miscellaneous amendments to Orders XXXVIII, LV and LXII, including a provision in Order XXXVIII rule 3(4) which permits the filing of an affidavit, sworn for the purposes of any proceedings, with the writ or other originating document by which the cause or matter is begun and provision under Order LV rule 7 which allows a claim for payment of moneys secured by a mortgage or charge to be brought by originating summons in the Chancery Division and an order to be made in proceedings by originating summons for delivery of possession by any person in possession of the mortgaged property.