1965. No. 134 [NC]

SUPREME COURT, NORTHERN IRELAND PROCEDURE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(*a*) to make up the record;

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

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

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

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

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

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

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

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

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

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

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

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

Application for leave to apply for certiorari, mandamus or prohibition

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

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

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

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

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

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

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

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

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

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

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

the proceeding or such shorter period as may be prescribed by any enactment; and where the proceeding is subject to an appeal and a time is limited by law for the bringing of the appeal the Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(2) Leave shall not be granted to apply for an order of mandamus requiring a county court to enter continuances and hear an appeal unless the application for leave is made within two months from the first day of the sitting at which the refusal to hear the appeal took place or the delay is accounted for to the satisfaction of the Judge to whom the application for leave is made.

Certiorari to remove allowance, disallowance or surcharge of an auditor under the Local Government Acts for the time being in force

16.—(1) An applicant for leave to apply for an order of certiorari to remove an allowance, disallowance or surcharge of an auditor (including a surcharge made pursuant to a declaration that any contract is illegal) acting under the Local Government (Ireland) Act 1871 shall first apply to the auditor to state the reasons for his decision in respect of the allowance, disallowance or surcharge, as the case may be.

(2) The application to the auditor shall be made in the case of an allowance not later than 14 days after the allowance has been made, and in the case of a disallowance or surcharge not later than 14 days after any sum has been certified to be due in respect of the disallowance or surcharge.

(3) An application for leave to apply for an order of certiorari shall be made within six weeks from the date of receipt of the auditor's reasons.

(4) No order of certiorari to which this rule applies shall be issued out of the Central Office unless the applicant shall within ten days, or such other time as the Judge may direct, enter into a recognizance before the Registrar or Clerk of the Crown and Peace in the county in which the cause may have arisen, or any resident magistrate, in the sum of £25 and with one or two sureties to the like amount to the satisfaction of the Registrar or the Clerk of the Crown and Peace or such other greater or less sum as the Judge may direct.

(5) The recognizance shall be conditioned:—

(*a*) to prosecute such certiorari without delay at the expense of the applicant;

(*b*) in the event of the allowance, disallowance, or surcharge being confirmed to pay to the auditor within one month after such confirmation the full costs to be taxed according to the course of the court.

17. Where the applicant shall fail to enter into such recognizance within the said period, or within such other period as the Judge may direct, the order of certiorari shall stand discharged and it shall be lawful for the auditor to give effect to such allowance, disallowance or surcharge in such manner as if the order had not been granted and to proceed to enforce the same as if no application for an order had been made."

(2) Rules 21, 24 and 26 to 32 are hereby revoked.

(3) For rules 33 to 49 the following rules shall be substituted:—

"Application for order of certiorari, mandamus and prohibition to be by motion

33.—(1) When leave has been granted to apply for an order of certiorari, mandamus or prohibition, the application shall be made by motion to a Judge in the Queen's Bench Division, and there shall unless the Judge granting leave has otherwise directed, be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.

(2) The application shall be grounded on the original statement and affidavit lodged in support of the application for leave to apply for the order of certiorari, mandamus or prohibition, as the case may be.

(3) Unless the notice of motion is issued within 14 days after leave has been granted, leave shall lapse.

(4) The notice shall be served on all persons directly affected, and where it relates to any proceedings in or before a Court and the object is either to compel the Court or an officer thereof to do any act in relation to the proceedings or to quash them or any order made therein the notice shall be served on the clerk of the Court or other officer performing such duties, the other parties to the proceedings and, where any objection to the conduct of the Judge is made, on the Judge.

(5) An affidavit giving the names and addresses of, and the place and date of service on, all persons who have been served with the notice shall be filed before the motion is put in the list for hearing, and, if any person who ought to be served under the provisions of the last preceding paragraph has not been served, the affidavit shall state that fact and the reason why service has not been effected, and the affidavit shall be before the Court on the hearing.

(6) If on the hearing of the motion the Judge is of the opinion that any person who ought to have been served therewith has not been served, whether or not he is a person who ought to have been served under this rule, the Judge may adjourn the hearing, in order that the notice may be served on that person, upon such terms, if any, as the Judge may direct.

34.—(1) Copies of the statement accompanying the application for leave shall be served with the notice, and copies of any affidavit accompanying the application for leave shall be supplied on demand and on payment of the proper charges, and no grounds shall, subject to the provisions of paragraph (2), be relied upon or any relief sought except those set out in the said statement.

(2) The Judge may, on the hearing of the motion, allow the said statement to be amended, and may allow further affidavits to be used if they deal with new matter arising out of the affidavits of any other party to the application, and where the applicant intends to ask to be allowed to amend his statement or use further affidavits, he shall give notice of his intention and of the proposed amendment to his statement, and shall supply on demand and upon payment of the proper charges, copies of any further affidavits.

(3) Every party to the proceedings shall supply to any other party on demand and on payment of the proper charges, copies of the affidavits which he proposes to use at the hearing.

35. On the hearing of any such motion as aforesaid any person who desires to be heard in opposition to the motion and appears to the Judge to be a proper person to be heard shall be heard, notwithstanding that he has not been served with the notice.

36.—(1) In the case of an application for an order of certiorari to remove any proceedings for the purpose of their being quashed, the applicant shall not question the validity of any order, warrant, commitment, conviction, or record, unless before the hearing of the motion he has lodged a copy thereof verified by affidavit in the Central Office, or accounts for his failure to do so to the satisfaction of the Judge.

(2) Where an order of certiorari is made in any such case as aforesaid the order may direct that the proceedings shall be quashed forthwith on their removal into the Queen's Bench Division.

37. Nothing in these rules shall be deemed to affect the rights of the Attorney General when acting on behalf of the Crown.

38. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

39. Unless the Court or Judge otherwise directs, an authenticated copy of an order of mandamus must be served on each person to whom it is directed.

40. In any case of mandamus in which a proceeding by way of interpleader may be proper, the procedure and practice used with respect to interpleader in the High Court shall be applicable so far as the nature of the case will admit."

(4) For rules 50 and 51 there shall be substituted the following rule:—

"**50.**—(1) The procedure in applications for an order under section 10(4) of the Northern Ireland Act 1962 shall be the same as in applications for an order of mandamus, and rules 14, 33, 34 and 35 shall apply so far as applicable to such applications.

(2) An application under section 10(4) of the Act shall not be granted if the respondent has acted in the office in question for the last six years before the commencement of the proceedings.

(3) Nothing in this rule shall reduce the power of the Judge to refuse such an application on the ground of undue delay.

(4) The applicant may, in answer to a plea under this rule, set up any forfeiture, surrender or avoidance of the office by the respondent within the said six years."

(5) In rules 52 and 55 for the word "writ" there shall be substituted the word "order".

(6) Rules 94, 95, 96 and 97 are hereby revoked.

(7) For rule 98 the following shall be substituted:—

"**98.** Copies of all informations, indictments or presentments and of all pleadings thereon, and of mandamus, convictions, orders, and every other

proceeding filed in the Crown Office, shall, when required, be made at the Crown Office and delivered to the respective parties or other parties requiring the same, on payment of the proper charges."

(8) In rule 138 for the words "mandamus prohibition and quo warranto" there shall be substituted the words "mandamus and prohibition".

(9) The proviso to rule 146 shall be deleted.

(10) Immediately after rule 157 there shall be inserted the following rule:—

"**157A.** No order for the issuing of a writ of habeas corpus ad subjiciendum shall be granted where the validity of any warrant, commitment, order, conviction, inquisition or record shall be questioned, unless at the time of moving a copy of such warrant, commitment, order, conviction, inquisition or record verified by affidavit, be produced and handed to the officer of the Court before the motion be made, or the absence thereof accounted for to the satisfaction of the Court."

2. Appendix V of the Rules of the Supreme Court, which relates to Crown Office Forms, shall be amended as follows:—

(1) In Form 28 the words from "When on Quo Warranto" to "is impeached" shall be deleted.

(2) Forms 1, 2, 5, 6, 13, 14, 15, 16, 17, 31, 42, 43, 68, 69 and 74 shall be deleted.

3. These rules may be cited as the Rules of the Supreme Court (Northern Ireland) (No. 3) 1965, and shall come into force on the 15th day of September, 1965.

Dated 28th June, 1965.

Signed: *MacDermott*
L. E. Curran
Charles L. Sheil
Robert Lowry
E. W. Jones
A. McGonigal
Leonard I. G. Fox
James J. Napier

EXPLANATORY NOTE

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

The 15th September, 1965, is appointed by the Northern Ireland Act 1962 (Commencement No. 1) Order in Council 1965 as the date for the coming into operation of subsections (1) to (4) of section 10 of the Northern Ireland Act 1962, which amend the law with respect to writs of mandamus, prohibition and certiorari and of informations in the nature of quo warranto.

These rules, by amending Order LXXXIV, give effect to the amendment of law made by section 10 of the Northern Ireland Act 1962, prescribe the procedure for obtaining an order of mandamus, prohibition or certiorari and confer upon a single Judge the power to make such an order.