



# Judicature (Northern Ireland) Act 1978

## 1978 CHAPTER 23

### PART VIII

#### RULES OF LAW IN JUDICIAL MATTERS GENERALLY

#### **86 Concurrent administration of law and equity to continue**

- (1) Every court exercising jurisdiction in Northern Ireland in a civil cause or matter shall continue to administer law and equity upon the basis that, wherever there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.
- (2) Every such court shall give the same effect as heretofore :—
  - (a) to all equitable estates, titles, rights, remedies, reliefs, counterclaims and defences and to all equitable duties and liabilities; and
  - (b) subject thereto, to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by common law or by any custom or created by any statute,and shall ensure that, as far as possible and subject to any statutory provision (including subsection (3)) to the contrary, all matters in dispute in a cause or matter before it may be completely and finally determined without further proceedings in respect thereof.
- (3) Without prejudice to any other powers exercisable by it, a court, acting on equitable grounds, may stay any proceedings or the execution of any of its process subject to such conditions as it thinks fit.
- (4) Nothing in this Act shall authorise a cause or proceeding pending in the High Court or the Court of Appeal to be stayed by prohibition or injunction.

#### **87 Assignment of debts and choses in action**

- (1) Subject to subsections (2) and (3), any absolute assignment by writing under the hand of the assignor, not purporting to be by way of charge only, of any debt or other legal

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chose in action, of which express notice in writing is given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim the debt or chose in action, shall be effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer, as from the date of the notice,—

- (a) the legal right to, and all legal and other remedies respecting, the debt or chose in action together with,
  - (b) the power to give, without the concurrence of the assignor, a good discharge for the debt or chose in action.
- (2) If the debtor, trustee or other person liable in respect of the debt or chose in action has had notice that the assignment is disputed by the assignor or anyone claiming under him, or of any other opposing or conflicting claims to the debt or chose in action, he shall be entitled, if he thinks fit, to call upon the several persons concerned to pursue their claims by interpleading, or he may, if he thinks fit, make an appropriate payment into court under the relevant provisions of the Trustee Acts (Northern Ireland) 1958 and 1962.
- (3) This section does not affect the provisions of the Policies of Assurance Act 1867.

## **88 Certain stipulations not to be of the essence of contracts**

Stipulations in a contract as to time or otherwise which according to rules of equity are not to be deemed to be or to have become of the essence of the contract are also construed and have effect at law in accordance with the same rules.

## **89 Merger**

There is no merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

## **90 Equitable waste**

An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any right to commit waste of the description known as equitable waste, unless an intention to confer that right expressly appears by the instrument creating the estate.

## **91 Orders for sale, mandatory or other injunctions and receivers**

- (1) The High Court and, in matters within its jurisdiction, the county court may at any stage of any proceedings—
- (a) order a sale of any property ;
  - (b) grant a mandatory or other injunction; or
  - (c) appoint a receiver,
- in any case where it appears to the court to be just or convenient to do so for the purposes of any proceedings before it and, if the case is one of urgency, the court may grant such an injunction before the commencement of the proceedings.
- (2) Any order, injunction or appointment under subsection (1) may be made either unconditionally or on such terms and conditions as the court thinks just (including, where an injunction is granted before the commencement of the proceedings, a condition requiring proceedings to be commenced).

- (3) If, whether before or at or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the court thinks fit, whether the person against whom the injunction is sought is or is not in possession under any claim or title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under colour of any title, and whether the estates claimed by both or by either of the parties are legal or equitable.

## **92 Damages in lieu of or in addition to injunction or specific performance**

Where a court has jurisdiction to entertain an application for an injunction or specific performance it may award damages in addition to or in substitution for such injunction or specific performance.

## **93 Suits for possession of land by mortgagors**

- (1) Unless an express declaration contained in the mortgage provides otherwise a mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of intention to take possession or to enter into the receipt of such rents and profits has been given by the mortgagee may—
- (a) sign and cause to be served notices to quit;
  - (b) determine tenancies or accept surrenders thereof ;
  - (c) sue for such possession or for the recovery of such rents or profits or to prevent or recover damages in respect of any trespass or other wrong relative thereto in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.
- (2) An action, suit or proceeding brought by virtue of subsection (1) shall not be defeated by proof that the legal estate in the land the possession of which is sought to be recovered, or in respect of which the rents or profits are sought to be recovered, or in respect of which the trespass or other wrong has been committed, is vested in a mortgagee.

## **94 Relief from ejectment**

- (1) Where the defendant, or any other person having a specific interest in the lease or tenancy agreement, after a judgment or decree of any court for possession in favour of the landlord in any action of ejectment for non-payment of rent (including an action for forfeiture for non-payment of rent)—
- (a) pays the rent and arrears thereof, with full costs, or lodges the same in court; and
  - (b) makes an application at the earliest opportunity at which he can reasonably do so after the enforcement of the order for delivery of possession of land (of which application the landlord shall receive due notice) to be restored to possession ;
- the court may on such application award or refuse an order for restoration of possession of the land and give such equitable relief as it thinks fit.
- (2) Unless and until application is made under subsection (1) the landlord shall hold the demised premises freed and discharged from the lease or tenancy agreement, subject,

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however, to any appeal from the original decree or judgment for possession in his favour.

- (3) This section applies to a grant at a fee farm rent or securing a rent by condition and, for the purposes of such application, references to the lease, to the landlord and to the demised premises shall be construed, respectively, as references to the grant, to the grantor and to the premises granted.
- (4) For the purposes of this section—
  - (a) references to a lease or grant include references to a sub-lease or sub-grant respectively, and
  - (b) references to the landlord or grantor include references to any person to whom the estate or interest of the landlord or grantor has passed.
- (5) This section shall not operate to restrict any other power of the court to grant equitable relief.