

THE HIGH COURT

[2023] IEHC 411

Record No. 2011/10989 P

BETWEEN

SUSAN GORRELL

PLAINTIFFS

AND

**DANA ROSEMARY SCALLON and
TV3 TELEVISION NETWORK LIMITED**

DEFENDANTS

Record No. 2011/10988P

BETWEEN

SUSAN STEIN

PLAINTIFFS

AND

**DANA ROSEMARY SCALLON and
TV3 TELEVISION NETWORK LIMITED**

DEFENDANTS

Judgment of Mr. Justice Brian O'Moore delivered the 13th day of July 2023

1. These two sets of proceedings are claims in defamation. The first Defendant, Dana Rosemary Scallon, is the sister of one of the Plaintiffs (Ms. Stein) and the aunt of the other Plaintiff (Ms. Gorrell). The second Defendant is now known as Virgin Media, and was the television network on which the allegedly defamatory material was broadcast. The current applications are brought in each action and are effectively identical. In these motions, Ms. Scallon seeks to have TV3 held responsible for her costs in defending the actions.

2. One striking feature of Ms. Scallon's applications is that the proceedings in which they are brought appear in essence to be at an end. The claims against TV3 were struck out by order of Keane J made on the 30th of June 2014. The claims against Ms. Scallon were struck out, on her application, by me on the 26th of July 2021. It was only after the proceedings had been struck out, against all Defendants, that the current motions were brought seeking to join TV3 as a third party to these actions, or alternatively an order in these actions that TV3 pay Ms. Scallon's costs.

3. The first issue to decide, therefore, is whether Ms. Scallon's current applications are procedurally sound. In particular, I must decide the question as to whether or not, in these very unusual circumstances, the original actions can act as the vehicle within which Ms. Scallon can claim her costs against the broadcaster. If this cannot be done, counsel for Ms. Scallon asserts that his client can take fresh proceedings against TV3.

4. The facts giving rise to the original claims occurred a very long time ago. This judgment will therefore be arranged as follows;

1. The background to these proceedings;
2. The progress of the actions;

3. Submissions;
4. Decision

1. THE BACKGROUND TO THESE PROCEEDINGS.

5. 2011 was a Presidential election year. One of the candidates was Ms. Scallan, who was then (and now) one of the best known citizens in the country, with a varied public career beginning when she won the Eurovision Song Contest in 1970. Some weeks before polling day, Ms. Scallan gave an interview on Prime Time, a current affairs programme broadcast on RTE. In that interview, on the 12th of October 2011, Ms. Scallan stated that ‘vile and malicious rumours’ were due to emerge about a member of her family.

6. On the 14th of October 2011 Ms. Scallan gave an interview to Ursula Halligan, a journalist with TV3. At paragraph 34 of her grounding affidavit, Ms. Scallan summarises the interview as follows;

‘The subject matter of the interview focused on what I had asserted on RTE’s Prime Time to be false allegations of a sexual nature which had been circulated by [Ms. Gorrell] in respect of my brother, John Brown, and Ms. Halligan expressly raised the issue of the allegations which I had made during the RTE Prime Time programme...’

7. Ms. Scallan claims that TV3 were notified by solicitors acting for Ms. Gorrell and Ms. Stein before the interview was broadcast that proceedings would issue if the transmission went ahead. She also says that at the time of the interview that TV3 had not disclosed to her that ‘...a notice of intention to bring a defamation action had been issued by [Ms. Gorrell’s] attorneys and/or solicitors. I further say that, had I been so advised, I would have refused to answer any pertinent questions.’

8. On this issue, Ms. Scallon's complaint is that in the wake of the Prime Time broadcast lawyers for both Ms. Stein and Ms. Gorrell sent a document headed 'Media Advisory Note' making it clear that both women reserved the right to issue proceedings should it be claimed that '...any potential allegations made by my client are in any way false, malicious, or otherwise.' The document exhibited by Ms. Scallon is dated the 14th of October 2014 and is sent by Eells & Tronvold, attorneys based in Cedar Rapids, Iowa.

9. In none of the affidavits filed on behalf of TV3 in these motions is this aspect of Ms. Scallon's account disputed.

10. On the 18th of October 2011, solicitors for Ms. Gorrell and Ms. Stein wrote a pre action letter to TV3. The actions commenced by Plenary Summons on the 1st of December 2011. Throughout the proceedings, Ms. Scallon and TV3 were separately represented.

2. THE PROGRESS OF THE ACTIONS

11. In each case, the Statement of Claim was delivered on the 4th of May 2012. Ms. Scallon's Defence was delivered on the 10th of July 2013. On the same day, a formal request for security for costs was issued to each Plaintiff on behalf of Ms. Scallon.

12. Security for costs applications were brought by both Ms. Scallon and TV3. Naturally, each Defendant had to set out on affidavit their defence to the claims and they duly did so. However, before either motion was heard the Plaintiffs settled with TV3. On the 30th of June 2014, the following statement was made to this court (Keane J) by counsel for TV3;

‘On October 14 2011 TV3 published an interview that suggested Susan Stein and Susan Gorrell had made unfounded allegations about a member of their family. TV3 apologises to Susan Stein and Susan Gorrell for any offence and distress caused by this interview.’

13. Ms Scallon says that her consent to the settlement was not sought by TV3, and would not have been given. She refers to newspaper reports that the Plaintiffs had received a ‘substantial payment’ from TV3. Ms. Scallon also complains that she was left to defend the two actions alone.

14. Remarkably, despite the fact that the apology was one made in open court in the context of proceedings solicitors for Ms. Scallon subsequently not only complained about it but also sought a separate apology along with ‘significant damages’ from TV3. Further proceedings were threatened, this time by Ms. Scallon against TV3, unless her demands were satisfied by the 2nd of July 2015. No action appears to have been prosecuted by Ms. Scallon, though it seems (from a letter of the 14th of December 2015 from TV3’s solicitors) that a writ may have been issued.

15. In her grounding affidavit, Ms. Scallon lays much emphasis on the criminal complaints made by Ms. Gorrell against Mr. Brown (who is Ms. Scallon’s brother). The allegations made by Ms. Gorrell were at the centre of Ms. Scallon’s comments both to Prime Time and to TV3 in 2011. Ultimately, Mr. Brown was prosecuted for ‘historical sex abuse offences’. He was charged on the 22nd of May 2013. One of the complainants was Ms. Gorrell. Mr. Brown’s trial began on the 7th of July 2014, and he was acquitted by unanimous jury verdict on the 25th of July 2014. From Mr. Brown’s perspective, the timing of TV3’s public apology was potentially problematic though it is of interest that the only public reporting of the apology described by Ms. Scallon postdates the acquittal. Ms. Scallon also sets out correspondence to her then solicitors from TV3’s solicitors on the 10th of June 2013, in which TV3 expresses concern that Mr. Brown had ‘failed to appear’ before Hendon Magistrates Court and that ‘a warrant has now been issued for his arrest’. Importantly, TV3 indicated

that it may 'have no alternative but to pursue a full indemnity' against Ms. Scallon. Notwithstanding this correspondence, neither defendant served notices for contribution and indemnity against each other and Ms. Scallon nowhere explains why this was not done on her behalf.

16. The implementation of the TV3 settlement is important. On the 30th of June 2014, the apology was read to Keane J. Counsel for TV3 then asked the court to strike out the proceedings against TV3. Counsel for the Plaintiffs consented to this. He then went on;

'And that leaves the two other motions, Judge, which are Nos 310 and 325, and as I said, Mr. Quinn appears for [Ms. Scallon], and subject to the Court, authorities have agreed, if these motions could be adjourned for mention to the last day of term, for the purpose of fixing a date in respect of the security for costs applications.'

17. The Order in respect of TV3's application was perfected on the 3rd of July 2014. It states that 'this Motion together with the proceedings were struck out'. The motion was TV3's motion for security for costs. The form of the Order has lead counsel for Ms. Scallon to submit, in these applications, that the Order was ineffective and that the actions continue to be in existence to this day as against TV3.

18. Subsequent to the TV3 settlement, Ms. Scallon pressed on with her motions seeking security for costs. She failed before Eager J, but on appeal Ms. Scallon succeeded in obtaining Orders for security for costs against both Ms. Gorrell and Ms. Stein. The Court of Appeal, by judgment of Whelan J of the 30th of November 2018, directed security. The amount of security was fixed at 150,000 euro 'to be apportioned between Ms. Gorrell and her mother equally'.

19. The security ordered by the Court of Appeal was never provided, and Ms. Scallon then brought an application to have the proceedings against her struck out. I made that Order on the 21st of July 2021. At that hearing, counsel for Ms. Scallon indicated that she was seeking orders for contribution and indemnity against TV3. Without prejudice to the position of TV3 (which was and remains that there are no proceedings in being in which any order against it can be made), Ms. Scallon was granted liberty to bring any application she wished against the broadcaster. At the request of counsel for Ms. Scallon, and despite the fact that the action was (at her request) struck out, the issue of her costs as against the Plaintiffs was adjourned for mention to a date in October.

20. On the 30th of September 2021, Ms. Scallon's current solicitors issued a motion seeking these three reliefs;

‘ 1. An Order providing for an award of the costs of these proceedings to the First Named Defendant;

2. An Order, if required, pursuant to Order 16, Rule 1 (1)...for leave of the Court to issue and serve a third-party notice for contribution and indemnity to the Second Named Defendant herein;

3. An Order under Order 16 Rule 12...and/or s. 169 of the Legal Services Regulations Act 2015 and/or the inherent jurisdiction of the Court, directing the Second Named Defendant herein to make a contribution to, or indemnify the First Named Defendant from, the costs incurred by the First Named Defendant in this action;’

21. On the 21st of October 2021, Ms. Scallon's solicitors issued a motion in each action seeking this primary relief;

‘An Order pursuant to Order 16, Rule 1 (1)...for leave of the Court to issue and serve TV3...with a third-party notice for contribution and indemnity;’

22. The motions are brought in the original actions. It is not immediately clear why the second motion was issued, as it replicated one of the reliefs sought in the first motion.

23. Prior to the striking out of the claims against Ms. Scallon, her solicitors wrote to TV3’s solicitors on the 10th of June 2021 a letter which concluded;

‘We request that [TV3] indemnify Dana for the full and reasonable costs of defending this action. Your client may well be entitled to pursue these costs against the Plaintiffs. However, it would be entirely unreasonable in these circumstances to expect Dana to engage in further protracted litigation to enforce a costs order against the Plaintiffs.

‘In the absence of any agreement from your client, we will issue proceedings in the High Court seeking an order for costs against your client under s. 169 of the 2015 Act for the reasons set out herein.’

24. The letter was headed “DEMAND FOR INDEMNITY AND/OR CONTRIBUTION FOR COSTS”

25. Despite this heading, and the content of the lengthy letter, this document was not relied upon by Ms. Scallon as constituting a Notice of Contribution and Indemnity within the meaning of the Rules of the Superior Courts. No proceedings under s.169 (as threatened in the letter) were brought to my attention, and I am not told whether such writs were issued.

3. SUBMISSIONS.

26. Much of the submissions made on behalf of Ms. Scallon understandably focused on why she feels badly treated by TV3. Certain of these complaints are described earlier in this judgment.

27. On the important procedural issues, TV3 argues simply that it was struck out as party to these proceedings on the 30th of June 2014. It is therefore not open to Ms. Scallon to claim contribution or indemnity from it in the context of actions from which it has been released. Inasmuch as Ms. Scallon seeks now to join TV3 to the actions, the broadcaster claims that she is just too late as she has not acted with due dispatch.

28. On the first of these issues, Ms. Scallon advances two broad submissions;

(A) The Order of Keane J has not released TV3, as it erroneously records that proceedings against all Defendants were struck out. Until an application is made under the slip rule, it is argued, TV3 remains a party. It is also strangely submitted (at paragraph 24 of the Scallon written submissions) that ‘it is now incumbent on [TV3] to explain how circumstances were allowed to develop whereby [Ms. Scallon] was obliged to continue with a security for costs application.’

29. This second argument makes no sense. It is premised on the extraordinary proposition that the proceedings against Ms. Scallon were in fact properly struck out in June 2014, that TV3 knew this, and that it nonetheless sat on this information and allowed Ms. Scallon to incur further costs by pursuing security for costs when there was no need to do so, as the actions against her were at an end. It ignores the basic fact that the claims against Ms. Scallon were not settled, and that she had no entitlement to behave as if they were. This unusual submission is one that does not need to be analysed further.

30. The first argument is not as obviously flawed, but is nonetheless unreal. The fact is that the claim against TV3 was settled, that the claim against it was struck out by Keane J, and that from then on TV3 were out of the case. The perfected Order was possibly inaccurate, but importantly it can only be said to be potentially in error inasmuch as it suggested that the proceedings against Ms. Scallon were struck out. The striking out of the proceedings against the other Defendant (TV3) was not something that required to be corrected. In fact, the Order states that "...this Motion together with the proceedings herein be struck out...and that any/all existing Orders for Costs against *EITHER PARTY* be now vacated" (emphasis added). As the Order records that the motion was the TV3 motion, that the only counsel who appeared were counsel for TV3 and counsel for the Plaintiffs, and that the solicitors involved were those acting for the Plaintiffs and for TV3, it is a somewhat forced reading of the Order itself to suggest that the actions against Ms. Scallon were ended. The Order, viewed as a whole, deals with the claims as between the Plaintiffs and TV3. Certainly, the accompanying transcript makes it absolutely clear that the claims against Ms. Scallon were proceeding; indeed, a date is fixed at the same brief hearing for the purpose of bringing on her motions for security for costs.

(B) ‘...[P]roceedings are not closed until a final order issues.’ It follows, Ms. Scallon argues, that even if the strike out against TV3 was effective she is still able to claim a contribution and indemnity against it in these actions as no final order in the proceedings against her has yet been made. No authority is advanced to support this proposition. It would, if correct, lead to a situation where a party released from an action is susceptible to a claim being made against it *IN THE SAME ACTION* without any order being made reattaching it to the proceedings. The argument ignores the fact that the claim against the released party has been struck out. Striking out a case is not meaningless; it has consequences. In particular, the striking out of a claim against a party has the effect that the party is released from the action unless, of course, that party is subject to a notice for contribution and

indemnity or some similar instrument. Here, at no time between the service of the writs in October 2011 and the TV3 settlement of June 2014 did Ms. Scallon's solicitors take the simple step of serving such a notice. This is despite the fact that, as set out at paragraph 15 of this judgment, in June 2013 TV3 itself threatened to seek an indemnity from Ms. Scallon. If ever there was a prompt to Ms. Scallon's lawyers to consider serving a notice of contribution and indemnity, this was it. There may well have been a good tactical reason for Ms. Scallon to hold back from serving such a notice, not least because it would in all likelihood have triggered the service of a notice to identical effect from TV3. Be that as it may, the fundamental proposition advanced by Ms. Scallon that she is free (until the final order in these actions) to behave as if TV3 remains a party is one which I do not accept.

31. The second issue is Ms. Scallon's ability to join TV3 as a third party to these actions.

32. Before I consider this issue, it should be noted that Ms. Scallon's written submissions suggest that the court can award costs 'whether or not [TV3] remains a party or third party subject to contribution and indemnity.' This submission, to the effect that the court can award costs against a person not party to the proceedings in any capacity, is not supported by any authority. There are, of course, provisions of the Rules with regard to (for example) non party discovery which allows the court to make costs awards involving non parties. However, the more wide ranging proposition that the court can require that the costs of a party to an action be paid in their entirety by a non party is not made out.

33. If TV3 must be joined to the actions, has Ms. Scallon acted promptly in seeking such an order? The requirement that such an application be brought promptly is emphasised by the Court of Appeal (Allen J) in *Susquehanna v Execuzen* [2022] IECA 209 at paragraph 115;

‘In my view the issue to be determined on an application to set aside a third party notice is solely whether the notice was served as soon as reasonably possible. If it was not, the third party is entitled to an order setting it aside.’

It should be remembered that in *Susquehanna* the application to join a third party was made pursuant to both Section 27 of the Civil Liability Act 1961 and Order 16 of the Rules of the Superior Courts. The High Court judgment in *Susquehanna* (undisturbed in this regard by the Court of Appeal) explains the relationship between the two provisions as follows (at least as far as timing is concerned);

‘42. The twenty-eight day time-limit thus represents, at most, a benchmark against which the statutory requirement to move “as soon as is reasonably possible” might be measured.’

I respectfully agree with this analysis. The obligation on the defendant seeking to join a third party is to move as soon as is reasonably possible; that is the requirement under Section 27. The provisions of Order 16 Rule 1, which require that a defendant serve a third party notice within 28 days of delivering its Defence, is a yardstick that may be used to ascertain if the defendant has moved with the requisite expedition.

34. Here, as the application to join TV3 as a third party is made on notice to it, the question of delay arises on this motion rather than any application to set aside.

35. The issue of the speed with which Ms. Scallon has moved is not meaningfully addressed in her evidence. This is despite the fact that the TV3 replying affidavits squarely raise her alleged delay. Ms. Scallon’s affidavits in response do not deal at all with the timing of these motions.

36. The need to bring these applications as soon as reasonably possible is not considered in any depth in Ms. Scallon's written submissions. The submissions note that delay is raised by TV3, that TV3 had indicated that it may seek its costs from Ms. Scallon, and argues that '...the appropriate time for seeking [contribution and indemnity] is at the point of the costs determination.' I have already considered the second point; the fact that TV3 had acted as it did makes it more rather than less appropriate that Ms. Scallon would have at that time considered her position about claiming an indemnity from her fellow defendant. The third point is completely at odds with the need to move with expedition. If correct, it would mean that joining a third party in order to secure an indemnity from it (even if confined to costs) should ordinarily occur at the end of the primary action rather than "as soon as reasonably possible" which is, of course, the requirement.

37. In his oral submissions, counsel for Ms. Scallon rejected the relevance of *Susquehanna* as Ms. Scallon was not a wrongdoer and section 27 did not apply to her. This was a surprising contention, as an earlier hearing of these motions had been adjourned by agreement of the parties in order to see what the Court of Appeal decided in that case.

38. As already observed, at first instance and on appeal the judgments in *Susquehanna* deal with both Section 27 and Order 16 Rule 1 of the Rules of the Superior Courts. The current motions were brought under Order 16. The September motion relied on Order 16 Rule 1, and Order 16 Rule 12. The October motion relied exclusively on Order 16 Rule 1. At the hearing, counsel for Ms. Scallon (having stated that Section 27 was irrelevant) initially disavowed any reliance on Order 16 Rule 1. He placed the full weight of the application to join TV3 as a third party on Order 16 Rule 12. Subsequently, counsel revised this approach and said that he relied on Order 16 Rule 1 "on a prudential basis."

39. Order 16 Rule 12 (1) reads;

“Where a defendant claims against another defendant:

[a] that he is entitled to contribution or indemnity, or

[b] that he is entitled to 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] that any question or issue relating to or connected with the said subject matter is substantially the same as question or issue arising between the plaintiff and the defendant making the claim and should properly be determined not only as between the plaintiff and the defendant making the claim but as between the plaintiff and the defendant and the other defendant or between any or either of them,

The defendant making the claim may, without any leave, issue and serve on such other defendant a notice making such claim or specifying such question or issue. No appearance to such notice shall be necessary.”

40. Counsel summarised this Rule as meaning;

‘Order 16 is headed third party procedure so it says where a defendant claims against another defendant. I say because it is under this rule it must mean exactly the circumstances that we have here where a defendant claims against someone who had been a defendant but is now a third party.’

41. While I agree that Order 16 is headed ‘Third Party Procedure’, I do not accept that this means that the proper meaning of Rule 12 is that it is confined to (or necessarily covers) cases where a continuing defendant wishes to claim against a former defendant who is now a third party. The Rule

means what it says. A defendant can serve a notice on a another defendant claiming contribution, indemnity or other appropriate relief. TV3 is not currently a defendant to either defamation action, so Rule 12 does not apply. The construction put forward on behalf of Ms. Scallon puts disproportionate emphasis on the title of the Order. It is difficult to avoid remarking that this is the very rule the use of which by Ms. Scallon's solicitors at any time prior to June 2014 could have avoided the current procedural predicament.

42. Even if the submission of counsel is correct, it does not avoid the need to join the former defendant as a third party. On any such application, the need to act promptly reasserts itself. If counsel was submitting that Order 16 Rule 12 permits a defendant to serve a notice of contribution on a former defendant, and that the mere service of such a notice brings the former defendant back into the proceedings as a third party, I do not accept such a contention. It is without authority or logic.

43. Ms. Scallon has been guilty of extraordinary delay in bringing the application to join TV3 as a third party. She could have served a notice of contribution and indemnity at any time up to June 2014. She did not do so, and has studiously avoided explaining this decision. After June 2014, it was open to Ms. Scallon to seek to bring back in TV3 as a third party. This was not done, and no evidence has been given by Ms. Scallon as to this failure to act. The letter seeking an indemnity from TV3, made through her current solicitors in June 2021, concluded not with the prospect that she would bring TV3 into these actions as a third party but with a statement that she would issue fresh proceedings. It was only from July 2021 onwards that any action was taken to join TV3 as a third party. An unexplained delay of over seven years is too much. This is particularly so against a background of a failure, for over two years prior to the TV3 settlement, to serve a mundane notice claiming relief against Ms. Scallon's then co defendant.

44. In assessing the delay, I have taken June 2014 as the starting point. Ms. Scallon does not make a case she could only join TV3 as a result of something learned by her at a later date. The time to make that case was in the evidence or, at the very latest, in the oral submissions in February 2023. However, when asked when the clock started running for the purpose of evaluating how promptly Ms. Scallon moved, her counsel's submissions were robust but unconvincing.

'JUDGE; You say the time for you, in proceedings that began in 2011, the time for you to join TV3 as a third party began in 2021 when I made the order in your favour striking out those proceedings.

COUNSEL; Well like I said, that is one way of looking at it, Judge.

JUDGE; Sorry...we are not here to look at a kaleidoscopic series of possibilities. What is your position?

COUNSEL; My position is that I am in time today to bring a third party application, that is my position.'

A few moments later, counsel stated;

'Well when I get an order as against the plaintiffs is when it starts to run and this is the application we are here for.'

45. This cannot be correct. Time runs from when Ms. Scallon could reasonably have been expected to make the application. The time for Ms. Scallon to seek to join a third party to these actions does not run from the concluding order against the plaintiffs in these proceedings.

4. DECISION

46. Considering the various reliefs sought by Ms. Scallon in the four motions that she has brought in these two actions, and for the reasons set out earlier in this judgment, I have concluded;

(A) Ms. Scallon cannot claim against TV3 as a codefendant in these proceedings. The claim against TV3 was struck out in June 2014, and it was therefore released from these actions at that time. The relief sought at paragraph 1 of the September motion is one that is not available to Ms. Scallon, for that reason alone.

(B) Ms. Scallon also fails in her application to join TV3 as a third party to these proceedings pursuant to Order 16 Rule 1 of the Rules of the Superior Courts. Ms. Scallon has delayed hugely in seeking such an order, and that delay is fatal to this relief as sought both at paragraph 2 of the September motion and in the October motion.

(C) Ms. Scallon's claim for costs pursuant to Order 16 Rule 12 will also be refused, as TV3 is currently neither a defendant or even a third party to either of these claims.

47. These motions have been decided entirely on procedural grounds. Ordinarily, I would decide the merits of the applications in case I am wrong about the basis upon which I have refused Ms. Scallon's applications. In this instance I have not done so. As Ms. Scallon's lawyers have raised the possibility that separate proceedings may well be launched against TV3 should the current applications fail, it would in my view be inappropriate for me to express any view on the rights and wrongs of Ms. Scallon's contention that the broadcaster should cover the costs incurred by her in successfully defending the defamation cases taken by her relatives.

48. In analysing the brief submissions made by TV3, and the more elaborate arguments put forward on behalf of Ms. Scallon, I have consistently referred to these actions as though they are still in existence. During the course of argument Ms. Scallon's counsel was asked to what proceedings TV3 were to be joined, given that the two actions had been struck out as against all defendants. The final response was;

“You haven't given me a costs order so they are not struck out yet. You haven't given me a costs order against the Plaintiffs.”

49. I am unconvinced by this. On the 21st of July 2021 I made, on Ms. Scallon's application, an order striking out the proceedings against her. As soon as this was done, the two cases were in essence at an end. While the question of Ms. Scallon's costs as against the Plaintiffs may have been left in abeyance, otherwise the proceedings were spent. Ms. Scallon's position is so unusual that she is now seeking to join TV3 to actions which she herself has caused to be brought to an end. I have not decided the motions against Ms. Scallon on this basis. It is, however, a sign of the lack of coherence of her legal position that one could even consider deciding these applications on this very basic point.

50. The four motions, which are fundamentally misconceived, will be dismissed. The costs will be decided when the matters are next in for mention.

