



"Court:

*The Motion is defective. Order 2 Rule 2 has no application. I will set aside the Judgment of 13 September 1991 and direct that any application be made afresh to the Chief Registrar on the ground that an application under Order 14 should have been made to the Chief Registrar (see Order 32 Rule 9 (k))."*

It is against that decision made on the 22nd October 1991 that this present appeal comes before us. That is over 3 years later. In the meantime the Respondent also has taken no steps to pursue its original claim.

The direction by Scott J. on the 22nd October 1991 assumed that the original application under Order 14 should have been made to the Chief Registrar in the first place. He relied on Order 32 Rule 9(k). That assumption is not correct.

Order 14 Rule 5 provides for an application for Summary Judgment on a counter-claim to be made to the Court.

"Court" is defined in Order 1 Rule 2 as any Judge of the High Court or where appropriate a Registrar. It is true that Order 32 Rule 9(k) did provide jurisdiction for a Registrar to have the jurisdiction of a Judge in chambers with respect to -

*"(k) Judgment under Order 14"*

It did not however provide that the Judge did not have jurisdiction.

Accordingly there was no proper basis for setting aside the original Judgment of the 13th September 1991.

Order 14 Rule 11 permits the setting aside of any Judgment given against a party who does not appear. However Scott J. ruled that order could not apply as the Respondent was represented at the original hearing when Summary Judgment was granted. We agree.

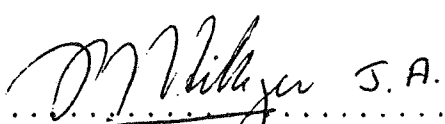
We note also that the order for Summary Judgment made on the 13th September 1991 was sealed on the 18th September 1991 - that is more than a month before the order now appealed against.

His Lordship therefore had no jurisdiction to make that order - the previous order of the 13th September 1991 having been sealed he was functus officio. Neither did he have any jurisdiction to alter vary or cancel the previous order by operation of the so called "slip rule".

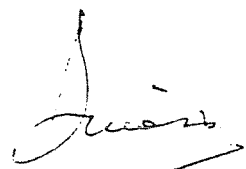
For those reasons the appeal is allowed. The Summary Judgment dated the 13th September 1991 is reinstated and restored. The Respondent is to pay the appellant its costs of this appeal.



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Sir Edward Williams  
Judge of Appeal



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Mr. Justice Peter Hillyer  
Judge of Appeal



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Mr. Justice J. D. Dillon  
Judge of Appeal