

the summons by a supplementary affidavit. *Kerr v. Suter*. (Wetmore, J., 1905), p. 254.

**6. Consent of Next Friend—Filing—Proceedings Avoided by Omission.]**—The English Rule requiring that, where the consent of the next friend of the plaintiff is necessary, it must be filed before the issue of the writ of summons, is in force in the Territories, and default is not cured by filing a consent filed subsequently to the issue, but avoids all the proceedings in the action. *Short v. Spence*. (Scott, J., 1905), p. 207.

**7. Writ of Habeas Corpus—Action for—Striking out Statement of Claim.]** An application for the custody of an infant must be by way of motion, summons or petition. Where the only relief sought in an action commenced by writ of summons was the issue of a writ of habeas corpus, the action was, on application of the defendant, dismissed. *Gruy v. Balkwell*. (Wetmore, J., 1907), p. 283.

**8. Reply—Delivery after Time Allowed by Rules—Validity.]**—A reply delivered more than eight days after the delivery of the defence without any order extending the time is not a bad pleading, and cannot be set aside for that reason alone, at least if no further step has been taken by the defendant before delivery of the reply. *Clarke v. Fawcett*. (Wetmore, J., 1907), p. 288.

**9.** Where the rules provide that a motion in Chambers shall be made by notice, the procedure by summons cannot be adopted. *Dominion Bank v. Freedt*. (Wetmore, J., 1907), p. 298.

**10. Disposition of Application—New Application for Same Order—Hearing on the Merits.]**—Where a party defendant had applied to be struck out, but his application dismissed on the ground that he had not entered an appearance:—*Held*, that a second application for the same purpose could not be entertained. *Cyr v. O'Flynn*. (Newlands, J., 1907), p. 299.

**11. Practice—Taxation of Costs—Judgment on Default of Pleading—Affidavit that Defence not Served.]**—In order to constitute the delivery of a

pleading, it must be both filed and served; default in either will entitle the party to be proceeded against as upon default in pleading, and consequently upon a taxation of a plaintiff's costs of judgment signed for default of defence, the costs of an affidavit proving that no defence was served will be disallowed where no defence has been filed. *Massey-Harris Co. Ltd. v. Hutchings*. (Wetmore, J., 1906), p. 10.

**12. Practice—Security for Costs—Affidavit of Belief as to Merits.]**—On a motion for security for costs it is not necessary that the defendant should swear positively as to the merits. A statement that he believes he has a good defence upon the merits is sufficient. *Kerr Co. v. Lowe*. (Wetmore, J., 1906), p. 361.

**13. Pleading—Ex parte Order Allowing other Pleas with General Issue—Setting Aside.]**—An order allowing other pleas to be made with a plea of not guilty by statute should not be made *ex parte*. If such an order is made *ex parte*, even inadvertently, the Judge who made it has no jurisdiction to set it aside. Any application for that purpose must be made to the Court en banc. *Jackson v. Canadian Pacific Railway*. (Wetmore, J., 1907), p. 423.

**14. Practice—Security for Costs—Affidavit—Corporation—Meaning of "Foreign Corporation."]**—A corporation has no residence, and a summons for security for costs based upon an affidavit stating that the plaintiff (a corporation) resided outside the jurisdiction, but omitting to state where its chief place of business was, was dismissed with costs.—Comments on *Molson's Bank v. Hall. Commercial Bank v. Kirkham*. (Wetmore, J., 1893), p. 479.

See ATTACHMENT OF DEBTS, 1—CERTIFICATES, 1—EXECUTORS AND ADMINISTRATORS, 2—EXEMPTIONS UNDER EXECUTION, 2—JUDGMENT, 1—PARTIES, 1—STOP ORDER, 1.

## PRINCIPAL AND AGENT.

See AGENCY.

## QUO WARRANTO.

See MUNICIPAL LAW, 1