

Chancery
action, Com-
mon Law
Division.
Deputy Clerk,
power of.

In an action brought of a Chancery nature—say to foreclose in a Common Law Division—a Deputy Clerk of the Crown has all the powers of a Local Registrar, or rather I had perhaps better say of a Registrar of the Chancery Division, and can make the order, under Rule 78; no division has any exclusive jurisdiction as to actions and each can exercise all the powers of the others, so can the officers of the respective divisions.

Jury notice.
Entry of cause
as non-jury.

If a jury notice has been given in a case it can only in strictness be got rid of as provided by Cap. 50, Sec. 254, s.s. 2, and Sec. 255, R.S.O., but if parties have settled the case and merely desire a pro forma verdict, I think the officer would exercise a sound discretion in letting it be entered as a non-jury case on a statement to that effect being endorsed on the C.C. of proceedings.

Item 116,
joinder of
issue.

Item 116 of tariff covers all the pleadings in an action. Joinder of issue is not provided for by the new tariff and it can only be allowed for by applying the old tariff to it.

Judgment by
default and
execution. A.
Verdict
against B. and
C. Costs of
first judgment.

Where an action is brought against A. B. and C., judgment by default is entered against A. and execution issued and returned N.B., a judgment is recovered at the assizes against B. and C. I see no means by which the costs against A. can be included in the judgment against B. and C.

Reference to
arbitration.
Jury and non-
jury costs.

Where a case is brought down to the assizes and a verdict is taken, subject to a reference to be increased or reduced, etc., by the Referee, costs to abide the event and the Referee found for an amount within the jurisdiction of the Division Court; if it was a jury case Plaintiff would get Division Court costs of the cause, and High Court costs of the reference and award, because Rule 112 makes the Common Law Procedure Act apply when there is a jury; but if it was a non-jury case and the verdict was rendered by the Judge, subject to the award, then the costs were solely and entirely in the discretion of the Judges, and the C.L.P. Act, Sec. 347, did not apply in any way, and the Judge being a party to the reference he was also a party to the costs abiding the event, and I think it must be considered that he exercised his powers over the costs by ordering them to abide the event of the award to which also the parties to the suit are consenting parties, and inasmuch as the event has been in favour of the Plaintiff he must be held to be entitled to full High Court costs. Where a Judge orders costs in an action it means the costs of the Court in which the action is brought irrespective of the amount recovered.

Chattel Mort-
gage, etc.,
filing out of
office hours.

I do not think an officer can be compelled to renew and file a Chattel Mortgage or other document out of office hours, but if he chooses to file it he can do so.

Quo-Warranto
Disclaimer
costs.

In Quo-Warranto proceedings, where Defendant has duly disclaimed, he is not liable for costs, unless ordered to pay them. If ordered to pay them I do not think anything could be allowed for instructions for Brief or Brief, but if the circumstances justified it, the officer might, under the Quo-Warranto tariff, allow a \$10.00 fee on return of summons, but this would be a considerable stretch of discretion—no allowance is made for a bill, but I would apply the other tariff to it and allow one dollar.