

In the Exchequer Court of Canada.

GENERAL RULES AND ORDERS.

In pursuance of the provisions contained in the 55th section of "The Exchequer Court Act," it is hereby ordered that the following Rules in respect of the matters hereinafter mentioned shall be in force in the Exchequer Court of Canada :—

1. Rule 36 of the Exchequer Court of Canada is hereby repealed, and the following substituted therefor :—

RULE 36.

WHEN AN ALLEGATION OF FACT IN A PLEADING IS TO BE TAKEN AS ADMITTED.

Every allegation of fact in any pleading in an action, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, person of unsound mind not so found by inquisition, or other person judicially incapacitated.

2. Rule 38 of the Exchequer Court of Canada is hereby repealed, and the following substituted therefor :—

RULE 38.

NO PLEADING TO BE INCONSISTENT WITH PREVIOUS PLEADINGS OF SAME PARTY.

No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

3. Rule 83 of the Exchequer Court of Canada is hereby repealed, and the following substituted therefor :—

RULE 83.

DEFAULT IN REPLYING OR DEMURRING WITHIN TIME
LIMITED, EFFECT OF.

If the Attorney-General, petitioner or plaintiff, does not deliver a reply or demurrer, or any party does not deliver any subsequent pleading, or a demurrer, within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue.

Dated at Ottawa, this 24th day of January, A.D. 1898.

GEO. W. BURBIDGE,

J. E. C.

In the Exchequer Court of Canada.

GENERAL RULES AND ORDERS.

In pursuance of the provisions contained in the 55th section of "The Exchequer Court Act," it is hereby ordered that the following Rules in respect of the matters hereinafter mentioned shall be in force in the Exchequer Court of Canada:—

1. Rule 105 of the General Rules and Orders of the Exchequer Court of Canada of the 4th March, 1876, is hereby rescinded and the following Rule enacted in lieu thereof:—

RULE 105.

USING AT TRIAL EXAMINATION FOR DISCOVERY.

Any party may, at the trial of an action or issue, use in evidence any part of the examination for the purposes of discovery of the opposite party; but the Judge may look at the whole of the examination, and if he is of opinion that any other part is so connected with the part to be used that the last mentioned part ought not to be used without such other part, he may direct such other part to be put in evidence.

Where any departmental or other officer of the Crown, or an officer of a corporation has been examined for the purposes of discovery, the whole or any part of the examination may be used as evidence by any party adverse in interest to the Crown or corporation; and if a part only be used, the Crown or corporation may put in and use the remainder of the examination of the officer, or any part thereof, as evidence on the part of the Crown or of the corporation.

2. The 129th Rule of the General Rules and Orders of the Exchequer Court of Canada of the 4th March, 1876, is hereby rescinded and the following Rule enacted in lieu thereof:—

RULE 129.

PRINTED COPIES OF PLEADINGS TO BE FURNISHED FOR
USE OF JUDGE.

The party who gives notice of trial shall furnish for the use of the Judge a printed copy of the pleadings, issues and order for trial; and where the trial is holden at any place outside of the City of Ottawa the same shall be certified by the Registrar of the Court

3. The 138th and 139th Rules of the Rules and Orders of the Exchequer Court of Canada of the 4th March, 1876, are hereby rescinded and the following Rules enacted in lieu thereof:—

RULE 138.

APPLICATION FOR A NEW TRIAL OR TO SET ASIDE OR
VARY THE JUDGMENT.

Any party who desires to obtain a new trial of any cause, or to set aside or vary any judgment, must apply for the same to the Court by motion for an order calling upon the opposite party to show cause why a new trial should not be directed, or why such judgment should not be set aside or varied. The motion shall be made within thirty days after the judgment is given, or within such extended time as the Court may allow. The order, if made, shall be returnable at such time as the Court may direct, and if no such direction is given, then in *fourteen days*.

RULE 139.

ORDER FOR, WHEN TO BE SERVED.

A copy of such order shall be served on the opposite party within such time as the Court may direct, and if no such direction is given, then within *eight days* from the time of the same being made.

4. The 150th Rule of the said Rules and Orders of the 4th of March, 1876, is hereby rescinded.

DEPUTY-REGISTRAR.

5. Any Officer of the Court whom the Registrar of the Court, with the approval of the Governor in Council, may appoint to be his deputy shall, subject to the

direction of the Registrar, perform the duties of Registrar, and shall for that purpose have and exercise the authorities and powers of the Registrar.

ACTING REGISTRARS OF THE EXCHEQUER COURT OF
CANADA.

6. (a) The Judge of the Court may from time to time, by General Order, name and appoint a person at any place who shall, if the Registrar, or his Deputy, is not present thereat, act as Registrar of the Court at any sitting held at such place.

(b.) The District Registrars on the Admiralty side of the Exchequer Court shall, within their respective Admiralty Districts, be Acting Registrars of the Exchequer Court

(c.) Until further order, the following persons shall be Acting Registrars of the Exchequer Court for sittings of the Court to be held at the following places, that is to say :—

Louis H. Collard, Esquire, Deputy Prothonotary of the Superior Court of the District of Montreal, in the Province of Quebec, for sittings of the Court to be held at the City of Montreal ;

Godfrey Henry Walker, Esquire, Prothonotary of the Court of Queen's Bench for the Province of Manitoba, for sittings of the Court to be held at any place in the Province of Manitoba ;

Dixie Watson, Esquire, Clerk of the Supreme Court of the North-west Territories for the Judicial District of Western Assiniboia, for sittings of the Court to be held at the town of Regina, in the North-west Territories ;

Lawrence John Clarke, Esquire, Clerk of the Supreme Court of the North-west Territories for the Judicial District of North Alberta, for sittings of the Court to be held at the town of Calgary, in the North-west Territories ; and

Albert Edward Beck, Esquire, District Registrar of the Supreme Court of British Columbia for the Vancouver Judicial District, and Deputy District Registrar of the British Columbia Admi-

ality District, for sittings of the Court to be held at the cities of Vancouver and New Westminster, in the Province of British Columbia.

(d.) Whenever any sitting of the Exchequer Court is held at any place other than the City of Ottawa, and the Registrar of the Court at Ottawa, or his Deputy, is not present, the Acting Registrar for the District or place shall act as Registrar at such sitting, and if there be no such Acting Registrar, or if he be not in attendance, the Court may appoint any other person to act as Registrar at such sitting, and in any case the person so acting as Registrar at such sitting shall, for the purposes thereof, have all the powers and authorities of the Registrar of the Court.

(e.) The General Order of the Court of the 28th of February, 1877, and Rule 264, as contained in the 36th Rule of the General Rules and Orders of May 1st, 1895, are hereby rescinded.

SEALS.

7. Acting Registrars of the Exchequer Court, who are at the same time District Registrars of the Court on the Admiralty side thereof, shall, in proceedings in the Exchequer Court, use respectively the seals provided for use in the several Admiralty Districts, and other Acting Registrars shall use such seals as the Judge of the Exchequer Court may from time to time direct.

SUBPŒNAS.

8. Subpœnas to witnesses to attend at any place other than the City of Ottawa, may be issued under the hand of the Registrar of the Court and the seal of the Court, according to the existing practice of the Court, or under the hand of the Acting Registrar at the place where the attendance of the witness is desired, and under the seal prescribed for the use of such Acting Registrar.

FEEES.

9. The Acting Registrar shall be be entitled to and shall take to their own use respectively the fees prescribed in the schedule hereto marked Z.

REFERENCES.

(INTERPRETATION).

10. Unless the context otherwise requires, the expression "Judge," as hereinafter used, means a Local Judge in Admiralty of the Exchequer Court; and the expression "Referee" includes any such Judge and the Registrar or any officer of the Court, or any official or special referee to whom any cause, matter or question is referred.

A CAUSE MAY BE REFERRED.

11. Whenever any cause or matter is at issue, and at any stage of the proceeding thereafter, the Court may for the determination of any question or issue of fact, or for the purpose of taking accounts or making enquiries, refer such cause or matter, or any question therein to a Judge or other referee for enquiry and report.

PROCEEDINGS ON A REFERENCE TO A JUDGE.

12. Whenever any cause or matter, or any question therein, is referred to a Judge, he shall, on the application of any party thereto, fix the time and place of hearing the reference, of which due notice shall be given to the opposite party, and he shall proceed with the hearing thereof in like manner as at a trial before the Judge of the Exchequer Court. Officers of the Court in attendance at such hearing, and the Solicitors and Counsel of the parties shall be entitled to the like fees on such hearing as at a trial before the Judge of the Exchequer Court.

PROCEEDINGS ON A REFERENCE TO OTHER REFEREES.

13. Whenever any cause or matter, or any question therein, is referred to any referee other than a Judge, the referee shall, on the application of any party thereto, make an appointment to proceed with the hearing of the reference, of which due notice shall be given to the opposite party. At the time and place appointed such hearing shall be proceeded with *de die in diem*, but may, for good cause, be from time to time adjourned to some other day.

COPY OF PLEADINGS AND ORDER OF REFERENCE TO BE FURNISHED.

14. The party who applies to a referee to fix a time and place, or to make an appointment, for the hearing of any reference, shall furnish to the referee for his use a copy of the pleadings, issues and order of reference, certified by the Registrar of the Court.

EVIDENCE TAKEN ON REFERENCE.

15. Evidence shall be taken upon a reference before the referee, and the attendance of witnesses may be enforced by *subpœna* in the same manner, as nearly as may be, as at a trial before the Judge of the Exchequer Court. In any case of a reference to a Judge, and in other cases when so provided in the order of reference, the testimony of any witness may be taken down in shorthand by a stenographer, who shall be previously sworn to faithfully take down and transcribe the same.

POWER OF REFEREE.

16. A referee shall have the same authority in the conduct of any reference as the Judge of the Exchequer Court, when presiding at any trial before him; but nothing herein contained shall authorize him to commit any person to prison, or to enforce any order by attachment.

REFEREE MAY RESERVE QUESTIONS FOR DECISION OF COURT.

17. A referee may, before the conclusion of any hearing before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement, shall be entered as the Court may direct, and the Court shall have power to require any explanations or reasons from the referee and to remit the cause or matter, or any part thereof, for further enquiry to the same or any other referee.

REPORT, &c., TO BE FILED.

18. The report of a referee, with a copy of the evidence taken on the reference, and the exhibits and

other papers and documents filed with the referee, shall be transmitted by him to the Registry of the Court as soon as possible after the report is signed, and the Registrar, on receipt of the same, shall forthwith give notice to all the parties. Thereupon any party to the proceeding may cause such report, evidence, exhibits and other papers and documents to be filed, and shall give notice of such filing to the other parties to the proceeding.

APPEAL FROM REPORT.

19. Within *fourteen days* after service of the notice of the filing of any report, any party may, by a motion of which at least *eight days'* notice is to be given, appeal to the Court against any report, and upon such appeal, the Court may confirm, vary or reverse the findings of the report and direct judgment to be entered accordingly or refer it back to the referee for further consideration and report.

JUDGMENT ON THE REPORT.

20. At any time after the lapse of fourteen days after service of the notice of the filing of any report, any party may, if no appeal has been taken against the report, set the action down on motion for judgment, of which motion at least eight days' notice shall be given.

RIGHT TO BEGIN AND REPLY AS TO QUESTIONS OF COMPENSATION AND TITLE IN PROCEEDINGS BY INFORMATION.

21. Whenever on the trial of any proceeding by information in respect of land or property acquired or taken for, or injuriously affected by, the construction of any public work, any question of compensation or title arises, the defendant shall in respect of such questions begin and give evidence in support of his claim, and if in respect thereof evidence is adduced on the part of the Crown the defendant shall be entitled to the reply.

REPEAL OF RULES.

22. Rules numbered 128, 147, 159, 160, 161, 162, 163 164 and 165 of the General Rules and Orders of the

Exchequer Court of the 4th of March, 1876, are hereby rescinded.

APPLICATION OF RULES.

23. These rules shall apply to all proceedings in the Court.

 SCHEDULE Z.

FEES TO ACTING REGISTRARS.

- | | |
|---|---------|
| 1. For attendance at the trial of an action (to be paid by the party whose case is proceeding), per hour..... | \$ 1 00 |
| 2. Swearing each witness (to be paid by party producing witness)..... | 0 20 |
| 3. Marking each exhibit (to be paid by party filing same)..... | 0 10 |
| 4. On issuing each writ of subpœna | 1 00 |
| 5. For copy of any document, per folio of 100 words | 0 10 |
| 6. Each certificate required from the Acting Registrar. (The certificates required under Rule 125 to be paid by plaintiff)..... | 1 00 |

Dated at Ottawa, this 12th day of December, A.D. 1899.

(Sgd), GEO. W. BURBIDGE,

J. E. C.

IN THE EXCHEQUER COURT OF CANADA.

GENERAL RULES AND ORDERS.

In pursuance of the provisions contained in the 55th section of "The Exchequer Court Act" it is hereby ordered that the following rules in respect of the matters hereinafter mentioned shall be in force in the Exchequer Court of Canada:—

COMMENCEMENT OF PROCEEDINGS.

GENERAL.

1. Any proceeding in the Exchequer Court of Canada on behalf of the Crown may be instituted by filing an information in the name of the Attorney-General of Canada.
2. Any proceeding in the Exchequer Court against the Crown is to be instituted by filing a Petition of Right, or where there is a reference by the Head of any Department of a claim against the Crown, by filing a Statement of Claim.
3. Any other proceeding in the Exchequer Court may, unless otherwise specially provided, be instituted by filing a Statement of Claim.

IMPEACHMENT OF LETTERS PATENT OF INVENTION.

4 Any proceeding to impeach or annul any patent of invention may be instituted,

(a) By Information in the name of the Attorney-General of Canada; or

(b) By a Statement of Claim filed by any person interested; or

(c) By a writ of *scire facias* as provided in the 34th section of "The Patent Act."

5. With any Information or Statement of Claim filed to impeach or annul a patent of invention there shall be filed, with the Registrar of the Court, a sealed

and certified copy of the patent and of the petition, affidavit, specification and drawings relating thereto.

6. In any proceeding by Statement of Claim to impeach or annul a patent of invention, the plaintiff shall give security for the defendant's costs therein in the sum of one thousand dollars.

7. A writ of *scire facias* to impeach or annul a patent of invention may be in the form "AA" in the schedule hereto. It shall be tested of the day on which it is issued. It may be served in any manner in which an Information or a Statement of Claim may be served, and shall be returnable immediately after service thereof.

8. An appearance shall be entered for the defendant within *fourteen days* from the day of service of the writ, inclusive of the day of service.

9. If the defendant does not appear according to the exigency of the writ the Court may, on motion therefor, give such judgment, as upon the writ, it considers the plaintiff entitled to.

10. If the defendant appears before judgment is signed, he shall be served with a Statement of Claim, and thereafter the action shall proceed in accordance with the practice of the Court in proceedings commenced by a Statement of Claim.

11. On the trial of any action to impeach or annul a patent of invention the defendant shall be entitled to begin and give evidence in support of the patent, and if the plaintiff gives evidence impeaching the validity of the patent the defendant shall be entitled to reply.

PARTICULARS IN ACTIONS TO IMPEACH A PATENT, OR
FOR INFRINGEMENT.

12. With an Information or Statement of Claim to impeach or annul a patent the plaintiff must deliver particulars of the objections on which he means to rely.

13. In an action for infringement of a patent the plaintiff must deliver with his Statement of Claim, or by order of the Court or a Judge at any subsequent time, particulars of the breaches complained of.

14. The defendant must deliver with his Statement in defence, or by order of the Court or a Judge at any subsequent time, particulars of any objections on which he relies in support thereof.

15. If the defendant disputes the validity of the patent, the particulars delivered by him must state on what ground he disputes it, and if one of those grounds is want of novelty, he must state the time and place of the previous publication or user alleged by him.

16. Particulars delivered may be from time to time amended by leave of the Court or a Judge.

17. At the hearing no evidence shall, except by leave of the Court or a Judge, be admitted in proof of any alleged objection or infringement of which particulars are not so delivered.

18. On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant, and they respectively shall not be allowed any costs in respect of any particular delivered by them, unless the same has been proven or appears to the Court or a Judge to have been reasonable and proper, without regard to the general costs of the case.

ORDER FOR INJUNCTION, INSPECTION OR ACCOUNT.

19. In an action for infringement of a patent the Court or a Judge may, on the application of either party, make such order for an injunction, inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon as the Court or Judge may see fit.

COPYRIGHTS, TRADE-MARKS AND INDUSTRIAL DESIGNS.

20. Any proceeding in the Exchequer Court for the registration of any copyright, trade-mark or industrial design, or to have any entry in any register of copyrights, trade-marks or industrial designs made, expunged, varied or rectified, may be instituted by filing a petition in the Court.

21. A notice of the filing of the petition, giving the object of the application and stating that any person desiring to oppose it must, within *fourteen days* after

the last insertion of the notice in the *Canada Gazette*, file a statement of his objections with the Registrar of the Court and serve a copy thereof upon the petitioner, shall be published in four successive issues of the *Canada Gazette*.

22. A copy of such petition and notice shall be served upon the Minister of Agriculture and upon any person known to the petitioner to be interested and to be opposed to the application.

23. If no one appears to oppose the application, the petitioner may file with the Registrar an affidavit in support of the application, and upon *ten days* notice to the Minister of Agriculture, and upon serving him with a copy of any affidavit so filed, may move the Court for such order as upon the petition and affidavit he may be entitled to.

24. If any person appears to oppose the application he shall within *fourteen days* after the last publication of the said notice in the *Canada Gazette*, file with the Registrar, and serve upon the petitioner, a statement of his objections to the application.

25. The petitioner may within *fourteen days* after service of the statement of objections file and serve a reply thereto; and thereupon any issue or issues raised may be set down for trial or hearing in accordance with the practice of the Court.

26. Notice of trial shall be given as well to the Minister of Agriculture as to the opposite party.

GENERAL.

27. In any proceeding in the Exchequer Court respecting any patent of invention, copyright, trademark or industrial design, the practice and procedure shall in any matter not provided for by any Act of the Parliament of Canada or by the Rules of this Court (but subject always thereto) conform to and be regulated, as near as may be, by the practice and procedure for the time being in force in similar proceedings in Her Majesty's High Court of Justice in England.

28. The General Rules of Court of the 5th of December, 1892, respecting the impeachment of

patents, and of the 13th of November, 1891, are hereby repealed.

29. These Rules shall apply to proceedings in the Court irrespective of where the cause of action may arise.

Dated at Ottawa, this 25th day of January, A.D. 1900.

(Sgd.) GEO. W. BURBIDGE,
J. E. C.

SCHEDULE "AA".

[Writ of *Scire Facias*].

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of the County of Carleton, or any other of our Sheriffs in the Dominion of Canada.

—GREETING:

Whereas we lately by our letters patent sealed with the seal of our Patent Office, in the City of Ottawa, in our Dominion of Canada, and signed by the Honourable.....our Commissioner of Patents [*or as the case may be*], and bearing date the..... day of..... A.D. 19..., and registered in our said Patent Office, at Ottawa aforesaid, as No.....reciting that whereas A.B. [*residence and occupation*] had petitioned the Commissioner of Patents praying for the grant of a patent for an alleged new and useful.....[*as the case may be*] a description of which invention is contained in the specification of which a duplicate is thereunto attached and made an essential part thereof, and had elected his domicile at[*as the case may be*], and had also complied with the other requirements of "The Patent Act", ch. 61 of "The Revised Statutes of Canada," and the Acts amending the same, did by our said letters patent, grant to the said A.B., his executors, administrators, legal representatives and assigns, for the period of.....years from the date thereof, the exclusive right, privilege and liberty of making, constructing, and using and vending to others to be used in our Dominion of Canada the said inven-

tion,—subject nevertheless to adjudication before any Court of competent jurisdiction, and to the conditions contained in the Acts aforesaid.

And whereas [*set out assignments if any*].

And whereas E. being desirous, for the reasons hereinafter mentioned, to impeach the recited letters patent bearing date the.....day of.....A.D. 19 , granted to the said A.B. [*if assignment*, and assigned to the said.....] as aforesaid, has obtained a sealed and certified copy thereof, and of the petition, affidavit, specification and drawings relating thereto, and has, in accordance with the provisions in that behalf contained in the said Act and the Acts amending the same, filed the said sealed and certified copies of said letters patent, petition, affidavit, specification and drawings, in the office of the Registrar of our Exchequer Court of Canada, and the said letters patent and documents aforesaid are now of record in the said Court.

[*Then set out reasons for impeachment, as for example :*]

And whereas we are given to understand that our said letters patent bearing date the.....day of..... A.D. 19 , and numbered.....issued to the said A.B. [*if assigned*, and assigned to the said.....] as aforesaid, were and are contrary to the law, in this: that whereas the said A.B. did in the said petition state that he had invented a certain new and useful [*as the case may be*] not known or used by others before his invention thereof, as set forth in the said specification and drawings accompanying said petition.

And whereas the said A.B. in the said affidavit did swear that he verily believed that he was the inventor of the alleged new and useful.....[*as the case may be*] described and claimed in the said specification, and did swear that the several allegations contained in the said petition were respectively true and correct.

And whereas we are given to understand and be informed that the said A.B. did not invent the said alleged invention in the said petition and letters patent No....mentioned and claimed.

And also &c., &c.

By reason and means of which said several premises the said letters patent so granted as aforesaid to the said A.B. were, are and ought to be void and of no force and effect in law.

And We, being willing that what is just in the premises should be done, command you Our Sheriff of Our said County of Carleton or other our said Sheriffs, that you give notice to the said A.B. [*or.....as the case may be, if assigned*] that before Us in Our said Exchequer Court of Canada he be and appear within *fourteen days* from the service upon him of a copy of this writ, inclusive of the day of such service, to show if he has or knows anything to say for himself why the said letters patent No. as aforesaid so granted to him [*as the case may be*] ought not, for the reasons aforesaid, to be adjudged to be void, vacated, cancelled and disallowed, and further to do and receive those things which Our said Court shall consider right in that behalf, and that you return this writ immediately after the execution thereof, stating how you have executed the same, and the day of the execution thereof.

WITNESS the Honourable George W. Burbidge, Judge of Our Exchequer Court of Canada at Ottawa, the.....day of.....in the year of Our Lord one thousand nine hundred.....and in the..... year of Our reign.

L. A. A.,
Registrar.