

THE
RULES OF PRACTICE
AND PROCEDURE

OF THE

Supreme Court of Ontario

(IN CIVIL MATTERS)

Prepared by the Honourable Mr. Justice Middleton
under instructions from the Honourable the
Attorney-General.

Approved by His Honour the Lieutenant-Governor in Council, under
The Judicature Act, Section 103, to go into effect on the 1st day
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3 GEORGE V, CHAPTER 19, SECTION 103.

“ If and when the Rules of Practice and Procedure which are being prepared by the Honourable Mr. Justice Middleton, under instructions from the Attorney-General, are approved by the Lieutenant-Governor in Council, the same, and the tariffs of costs and the tariffs of fees payable to the Crown and to the officers of the Court contained therein shall on or from a day to be named by the Lieutenant-Governor in Council by proclamation have the same force and effect as if they had been embodied in this Act, and shall supersede the existing Rules and tariffs; and section 102 shall after that day no longer remain or be in force.”

Order-in-Council approved by His Honour the Lieutenant-Governor, the 11th day of July, A.D. 1913.

“ Upon the recommendation of the Honourable the Attorney-General, the Committee of Council advise that the Rules of Practice and Procedure prepared by the Honourable Mr. Justice Middleton be approved by Your Honour and that the same be brought in force on the 1st day of September next as provided by section 103 of the Judicature Act, 3 George V., chapter 19.”

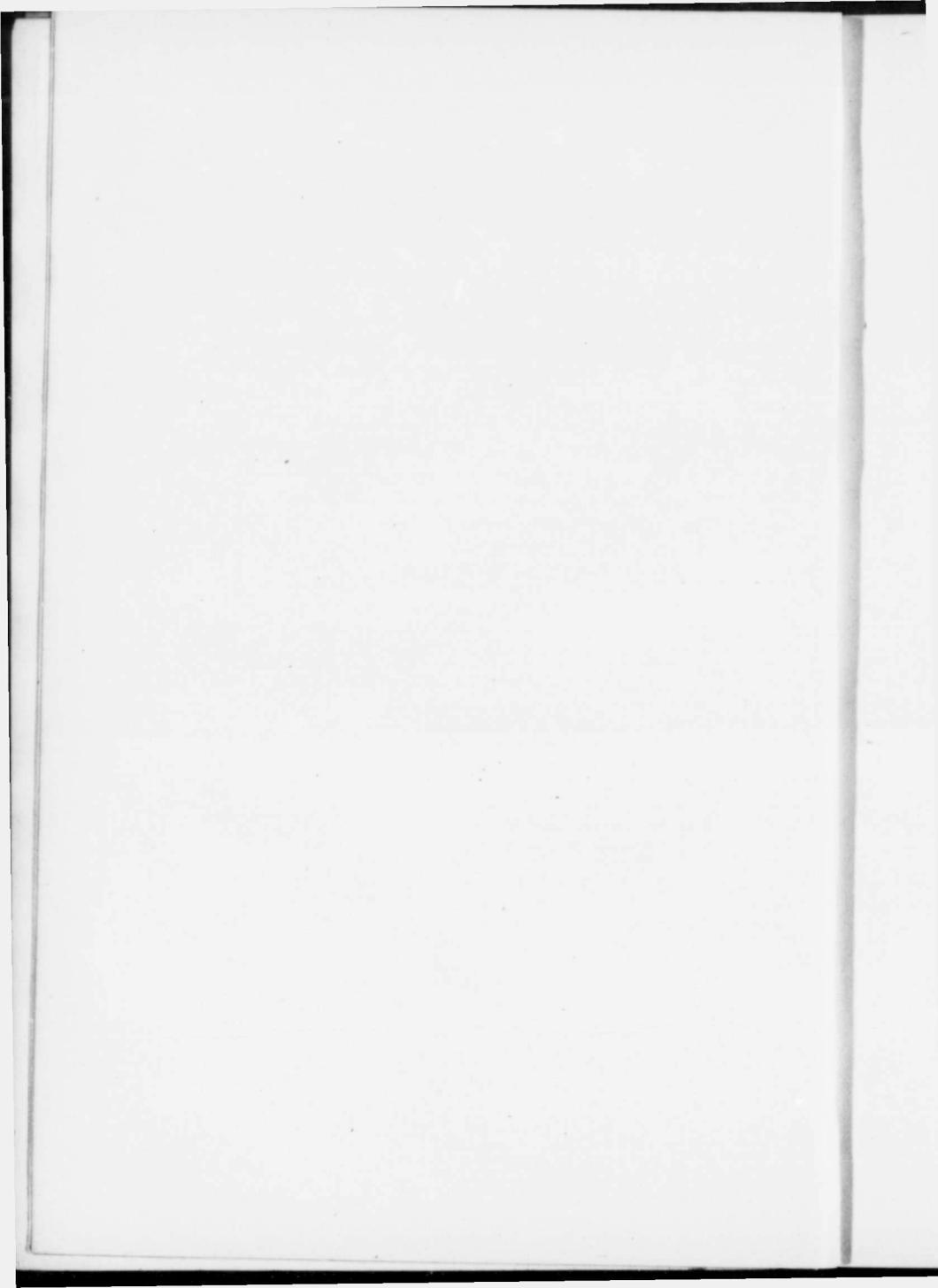


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Consolidated Rules of Practice.

CHAPTER I.

INTERPRETATION.

1. These Rules shall take effect on the 1st day of September, 1913. C.R. 1.

2. All Rules and orders heretofore passed are rescinded, except those mentioned in the schedule hereto, and as to all matters not provided for in these Rules, the practice shall be regulated by analogy thereto. C.R. 2 and 3.

3. In these Rules,

- (a) "Accountant" shall mean "The Accountant of the Supreme Court of Ontario."
- (b) "Action" shall include garnishee proceedings and proceedings for relief by interpleader. C.R. 6.
- (c) "County Court" shall include District Court, and "County" shall include "District."
- (d) "Judge" shall mean a Judge of the High Court Division of the Supreme Court.
- (e) "Judgment creditor" shall mean the party or person who is entitled to receive payment or to enforce a judgment or order.
- (f) "Judgment debtor" shall mean the party or person to make payment under any judgment or order, or against whom the same may be enforced.

- (g) In Rules 533 to 599 "Judgment" shall include an order to the same effect. C.R. 835.
- (h) "Sheriff" shall include any Coroner, Elisor or other officer charged with the execution of any writ or process. C.R. 1102 and 892.
- (i) "Time prescribed" shall mean time limited or appointed by the Rules or by any judgment or order.
- (j) In Rules 11 to 31, the words "Writ of Summons" and "Writ" shall include any document by which proceedings are commenced, and shall also include all proceedings by which a person not a party is added as a party either before or after judgment, e.g., proceedings in the Master's office and garnishee and third party proceedings. 3 Edw. VII. ch. 8, s. 13.
- (k) "Writ of Execution" and "execution" shall include all writs by which a judgment may be enforced, and in the Rules relating to interpleader shall also include an order of attachment under the Absconding Debtors Act. C.R. 1102, *amended*.

4. The division of these Rules into chapters, titles, and headings is for convenience only, and shall not affect their construction.

CHAPTER II.

FORM AND COMMENCEMENT OF PROCEEDINGS IN THE SUPREME COURT.

(i) *Writ of Summons.*

5.—(1) All actions shall be commenced by the issue of a writ of summons, tested in the name of the Chief Justice of Ontario, which shall be prepared by the plaintiff, and shall contain the names of the parties and the characters in which they sue and are sued, and the office in which and the time within which the defendant is to enter his appearance, and shall be indorsed with a short statement of the nature of the plaintiff's claim. C.R. 120 and 124.

(2) Any claim on behalf of His Majesty, including a claim to repeal letters patent under the great seal, may be enforced by an action brought by the Attorney-General on behalf of His Majesty. *See* C.R. 238-241.

6. The proper officer shall, on receiving a copy of the writ so prepared, to be filed with him, issue the writ by signing and sealing the same with his seal of office, and shall also note in the margin of the writ from what office and in what county it is issued, and shall subscribe his name thereto. C.R. 123 and 125.

7. A writ for service in Ontario (either personally or in any other manner), shall be according to Form No. 1. A writ for service out of Ontario shall be according to Form No. 2. Where the defendant is not a British subject and is not in British Dominions, notice of the writ, according to Form No. 3, shall be served in lieu of the writ. C.R. 127, 128.

8. The plaintiff may issue a duplicate writ or concurrent writ for service either within or without Ontario, tested of the same day as the original writ, and marked "duplicate" or "concurrent," and with the date of actual issue. Such writs shall only be in force during the currency of the original writ. C.R. 129, 130, 131.

9. The writ shall be in force for twelve months from the date thereof, including the day of such date; but if for any sufficient reason any defendant has not been served, the writ may at any time before its expiration, by order, be renewed for twelve months, and so from time to time during the currency of the renewed writ. The writ shall be marked by the proper officer, "renewed," with the date of the order, C.R. 132.

(ii) *Originating Notice.*

10.—(1) Every proceeding in the Court, other than an action or a proceeding that may be taken *ex parte*, shall, unless otherwise specially provided be commenced by a notice of motion called an originating notice.

(2) When by any statute an application may be made to the Court or a Judge in a manner therein provided such application may also be made by originating notice, but any security required by such statute shall be given. *New.*

(iii) *Indorsement of Address, Etc.*

11.—(1) Where a plaintiff sues by a solicitor, the writ of summons (or notice in lieu thereof), shall be indorsed with the solicitor's name or firm and place of business, where service may be made.

(2) Where the solicitor issuing a writ of summons is only agent of another solicitor, his name or firm and place of business as well as the name or firm and place of business of the principal solicitor shall be indorsed. C.R. 134.

12.—(1) Where a plaintiff sues in person, there shall be indorsed upon the writ or notice in lieu thereof, his place of residence and occupation.

(2) If the plaintiff's residence is more than two miles from the office in which the proceedings are commenced, there shall also be indorsed an address for service within that distance. In default, any paper not requiring personal service may be served by mailing the same to the plaintiff at his address, by registered letter. C.R. 135.

13.—(1) The solicitor whose name is indorsed on any writ of summons, shall on demand declare forthwith whether the cause or matter has been commenced by him or with his authority or privity. He shall also, if demanded, disclose the profession or occupation, and place of abode (giving name of street and house number where practicable) of the plaintiff. In default the action may be stayed and the solicitor may be directed to pay the costs.

(2) If the solicitor declares that the writ was not issued by him or with his authority or privity, an order may be obtained *ex parte* directing that all proceedings shall be stayed, and thereafter no further proceedings shall be taken without leave. C.R. 143.

14.—(1) Where an action is brought in the name of a firm or in a name or style other than the plaintiff's own name, the plaintiffs shall, on demand, declare forthwith in writing the names and places of residence of all the persons constituting the firm, or carrying on business under such name or style.

(2) If the plaintiffs fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed. C.R. 144.

(iv) *Service.*

15. Service of a writ of summons shall not be required where the defendant by his solicitor accepts service, and undertakes to appear. C.R. 145 and 174.

16. Save as hereinafter provided, in the absence of such acceptance of service every writ of summons shall be served personally, but if it appears that the plaintiff is unable to effect prompt personal service, substituted service, by advertisement or otherwise, may be ordered. Substitutional service may also be allowed of any other document which requires personal service. C.R. 146 and 167.

17.—(1) The person serving a writ of summons shall, within three days after the service, indorse on the writ the day of the month and week of the service thereof, and the date of the making of the indorsement, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default without leave, to be obtained at the sole cost of the plaintiff.

(2) Every affidavit of service of a writ of summons shall state the day on which such indorsement was made. C.R. 150.

18.—(1) Where an infant is sued in respect of his interest in an estate, he shall be served by delivering a copy of the writ to the Official Guardian.

(2) The post office address of the father or guardian of such infant or of the person with whom or under whose care the infant is shall be indorsed on the copy of the writ so served.

(3) From the time of such service, the said Official Guardian shall be the guardian *ad litem* of the infant, unless and until otherwise ordered, and it shall be the duty of the said Official Guardian, or of any other guardian appointed for such infant, forthwith to attend to the interests of the infant, and to take all such proceedings as may be necessary for the protection of such interests in the proceeding in which he is appointed guardian, and for that purpose to communicate with all proper persons and parties, including the father or guardian of the infant and the person with whom or under whose care the infant is.

(4) In case there is more than one infant for whom service is made on the Official Guardian, one copy only of the writ need be served, but the name of each person on whose

behalf the Official Guardian is served shall be stated on the copy served. C.R. 152.

19. Where the action against an infant defendant is for the recovery of lands, goods, or chattels of which he is personally in possession, service shall be made on the infant personally, and a copy of the writ shall also be delivered to the Official Guardian, indorsed as aforesaid, who may enter an appearance for the infant, in the absence of other order or direction. C.R. 153.

20. Where the action is against an infant in respect of a personal tort or for the recovery of money only, the infant shall be served as in the case of an adult defendant. C.R. 154.

21.—(1) Where a lunatic, or person of unsound mind not so found by inquisition or judicial declaration, is a defendant, service on the committee of the lunatic or on the person with whom the defendant of unsound mind resides, or under whose care he is, shall, unless otherwise ordered, be deemed good service.

(2) The Inspector of Prisons and Public Charities shall not be regarded as the committee of a lunatic detained in any public Asylum within the meaning of this rule. (*See R.S.O. 1897, c. 317, s. 55.*) C.R. 157.

22. After service of the writ no further proceedings shall be taken against a defendant who is a lunatic and has no committee, or no committee except the Inspector of Prisons and Public Charities, or against a defendant of unsound mind not so found, until a guardian *ad litem* is appointed. C.R. 158.

23. A corporation may be served with a writ of summons by delivering a copy to the Mayor, Warden, Reeve, President, or other head officer, or on the Township, Town, City or County Clerk, or on the Cashier, Treasurer or Secretary, Clerk or Agent of such corporation, or of any branch or agency thereof in Ontario. Any person who, within Ontario, transacts or carries on any of the business of, or any business for, any corporation whose chief place of business is without Ontario, shall, for the purpose of being served as aforesaid, be deemed the agent thereof. C.R. 159.

(2) Service may also be effected on any person appointed for that purpose under the Extra-provincial Corporation Act. 63 Vic, c. 24, s. 8 (b).

(3) In the case of a railway, telegraph, or express corporation, service may be effected on the agent of such corporation at any branch or agency thereof, or on any station master of the railway company, or on the telegraph operator or express agent having charge of any telegraph or express office belonging to such corporation. C.R. 160.

24. Where service of a writ out of Ontario may be allowed, and the defendant, whether a British subject or not, is, or was at the time the cause of action arose, carrying on business within Ontario, if the cause of action arose in respect of such business, an order may be made allowing service upon any person having the control or management of the business. C.R. 147.

(v) *Service out of Ontario.*

25.—(1) Service out of Ontario of a writ of summons or notice of writ may be allowed wherever:—

- (a) The whole subject-matter of the action is land situate within Ontario (with or without rents or profits);
- (b) Any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within Ontario is sought to be construed, rectified, set aside, or enforced;
- (c) Any relief is sought against any person domiciled or ordinarily resident within Ontario;
- (d) Administration is sought of the personal estate of a deceased person who at the time of his death was domiciled within Ontario, or the execution (as to property situate within Ontario) of the trusts of a written instrument of which the person to be served is a trustee, which ought to be executed according to the law of Ontario;
- (e) The action is founded upon a judgment or on a breach within Ontario of a contract, wherever made, which is to be performed within Ontario or on a tort committed therein;
- (f) An injunction is sought as to anything done or to be done within Ontario, or any nuisance within Ontario is sought to be prevented or removed, whether damages are or are not claimed in respect thereof; or

(g) A person out of Ontario is a necessary or proper party to an action properly brought against another person duly served within Ontario.

(h) Service may also be allowed where the action is for any other matter and it appears that the plaintiff has a good cause of action against the defendant upon a contract or judgment, or in respect of a claim for alimony, and that the defendant has assets in Ontario, of the value of \$200 at least, which may be rendered liable for the satisfaction of the judgment; but the order allowing service shall in such case provide that in case the plaintiff should recover judgment if the defendant does not appear, the plaintiff shall prove his claim, in such manner as may be deemed proper.

(2) Where it is necessary or proper to serve persons, not already parties to an action, with an office copy of any judgment or order, or notice to prove claims thereunder, service of the same out of Ontario may be allowed.

(3) Service out of Ontario may also be allowed of an attaching order in cases falling within the provisions of Rule 590. C.R. 162 and 126, and 5 Edw. VII. ch. 13, sec. 22.

26. Every application to allow service out of Ontario shall be supported by an affidavit, stating that in the belief of the deponent the applicant has a right to the relief claimed, and shewing in what place or country the person to be served is or probably may be found, and whether he is a British subject or not, and that the case is a proper one for service out of Ontario under these Rules. C.R. 163.

27.—(1) An order allowing service of a writ of summons out of Ontario may be made before the writ is issued and shall limit the time for entering appearance.

(2) An order allowing service out of Ontario of a notice of motion or attaching order, shall limit a time, which must elapse after service before the day when the motion is to be heard.

(3) An order allowing service out of Ontario of a judgment or order or notice to prove claims thereunder shall limit a time for moving to add to, vary or set aside the judgment or order.

(4) In limiting the time, regard shall be had to the place where service is to be effected. C.R. 164.

28. Where a defendant is to be served out of Ontario with a writ of summons or notice in lieu thereof, the statement of claim shall be served therewith unless the writ is specially indorsed. C.R. 166.

29.—(1) Where the defendant is to be served out of Ontario, and is neither a British subject nor in British dominions, notice of the writ and not the writ itself shall be served. Such notice shall, save as herein provided, be served personally, unless otherwise directed. C.R. 165.

30. Where service is to be effected in any foreign country to which this Rule is by direction of the Chief Justice of Ontario made to apply, upon any one other than a British subject, the following procedure shall be adopted:—

(1) The notice of the writ and statement of claim shall be transmitted by the Clerk of Records and Writs to the Secretary of State with a copy thereof, translated into the language of the country in which service is to be effected with a request for further transmission of the same to the Government of the country in which it is to be served, with the request that service, either personal or in such manner as is consistent with the practice and usage of that country when personal service cannot be made, be effected and that return be made shewing how such service has been effected.

(2) Any such official return shall be regarded as proof of the facts therein stated.

(3) The plaintiff's solicitor shall, before the papers are transmitted, pay or secure to the satisfaction of the Clerk of Records and Writs a sufficient sum to answer the fees and charges in connection with such service. *See Eng. Rule, 71. New.*

31. Where in any civil or commercial matter pending before a Court or Tribunal of a foreign country, a letter of request from such Court or Tribunal for service on any person in Ontario of any process or citation in such matter, is transmitted to the Supreme Court for Ontario, the following procedure shall be adopted:—

(1) The letter of request for service shall be accompanied by a translation thereof in the English language, and by two copies of the process or citation to be served, and two copies thereof in the English language.

(2) Service of the process or citation shall, by a direction of a Judge, be effected by any Sheriff or his authorized agent.

(3) Such service shall be effected by delivering to and leaving with the person to be served one copy of the process to be served and one copy of the translation thereof or may be effected in such other manner as may be directed by the letter of request.

(4) After service has been effected the process shall be returned to the Clerk of the Supreme Court, together with the evidence of service by affidavit of the person effecting the service, sworn before a Notary Public and verified by his seal, and particulars of charges for the cost of effecting such service.

(5) The Clerk of the Supreme Court for Ontario shall return the letter of request for service, together with the evidence of service, with a certificate appended thereto, duly sealed with the seal of the said Court. Such certificate shall be in accordance with Form No. 16.

(6) Nothing in this Rule shall prevent service from being effected in any other manner in which it may now be made. C.R. 1320.

(vi) *Indorsement of Claim.*

32. Upon every writ the plaintiff shall indorse a concise statement of his claim. It shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief sought. (*See* Form No. 4). C.R. 137.

(vii) *Special Indorsements.*

33.—(1) The writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim, where the plaintiff seeks to recover a debt or liquidated demand in money (with or without interest, and whether the interest be payable by way of damages or otherwise), arising—

- (a) Upon a contract, express or implied, (as for instance on a bill of exchange, promissory note, cheque, or other simple contract debt); or
- (b) On a bond or contract under seal for payment of a liquidated sum; or on a judgment; or
- (c) On a statute where the amount sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

- (d) On a guaranty, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand; or
 - (e) On a trust; and also
 - (f) In actions for the recovery of land, (with or without a claim for rent or mesne profits); and
 - (g) In actions for the recovery of chattels. C.R. 138.
 - (h) In actions for foreclosure or sale. *New.*
- (2) The writ in such case shall be in accordance with Form No. 5.

34. Where the plaintiff in an action of dower claims damages for detention of her dower, the indorsement shall contain a statement that the plaintiff claims damages for the detention of her dower, from some day to be stated. C.R. 142.

CHAPTER III.

DEFAULT OF APPEARANCE.

35. Except where otherwise provided or otherwise ordered a defendant who fails to appear shall not be entitled to notice of any subsequent proceedings in the action. C.R. 573.

36. Where a defendant fails to appear the plaintiff before signing judgment or noting the pleadings closed, shall file an affidavit of service of the writ or the notice in lieu thereof, or the undertaking of the defendant's solicitor accepting service and agreeing to enter an appearance, with an affidavit verifying the undertaking as the case may be. C.R. 574.

37. Where the writ is specially indorsed for a debt or liquidated demand in money, and any defendant fails to appear, the plaintiff, notwithstanding that the writ may be indorsed with any other claim, may, as against such defendant, sign final judgment for any sum not exceeding the amount for which the writ is so specially indorsed, together with interest as claimed to the date of the judgment, and for his costs, without prejudice to his right to proceed with the action against any other defendant, and as to any other claims indorsed. C.R. 575.

38. Where the writ is specially indorsed with a claim for the recovery of chattels, and any defendant fails to appear the plaintiff, notwithstanding that the writ may be indorsed with any other claim, may, as against such defendant, sign final judgment for the recovery of the chattels and his costs without prejudice to his right to proceed with the action against any other defendant and as to any other claims indorsed. C.R. 577.

39.—(1) Where the writ is not specially indorsed but as indorsed includes a claim for the detention of goods and pecuniary damages, or either of them, and any defendant fails to appear, interlocutory judgment may be signed against such defendant, directing an assessment of damages, without prejudice to the right of the plaintiff to proceed against any other defendants, and such damages may, unless otherwise ordered, be assessed, as against such defendant, either before or at the same time as the trial of the action, against any other defendant, or the Court may order that instead of an assessment the value of the goods and amount of damages, or either of them, shall be ascertained by a reference or in any other way. C.R. 578, 579.

(2) No interlocutory judgment shall be signed for default of appearance, unless the precise cause of action is clearly stated in the indorsement of the writ. *New.*

40.—(1) Where a defendant fails to appear in an action for dower, the plaintiff may sign judgment of seisin forthwith, and sue out a writ of assignment of dower, but she shall not, unless otherwise ordered, be entitled to costs.

(2) Where the plaintiff claims arrears of dower or damages for detention of her dower, the entry of a judgment of seisin and the taking of proceedings for the assignment of her dower thereunder shall not prevent her from proceeding with the action for the recovery of such arrears or damages. C.R. 581.

41.—(1). Where an action is for or includes a claim for the recovery of land, and any defendant fails to appear, or if an appearance is entered but the defence is limited to part only, the plaintiff, notwithstanding that the writ may be indorsed with any other claim, may sign judgment against such defendant for possession of the land or of the part thereof to which the defence does not apply. C.R. 582.

(2). Where judgment by default is signed, but is not signed against all the defendants, a writ of possession shall not be issued unless directed by the Court. C.R. 584.

42. Where an action is for or includes a claim for the recovery of land, and any defendant fails to appear, and the writ is indorsed with a claim for mesne profits, arrears of rent, or double value in respect of the premises claimed or any part of them, or damages for breach of contract, or wrong or injury to the premises claimed, the plaintiff may sign judgment against such defendant for possession, and may proceed as to the other claims. C.R. 583.

43. Where any defendant fails to appear in an action for recovery of land, the plaintiff shall not be entitled to costs unless he files an affidavit showing that such defendant was at the time of the issue of the writ in actual adverse possession of the land, or obtains an order allowing him to sign judgment as well for his costs as for possession of the land. C.R. 585.

44. In all cases not hereinbefore provided for a statement of claim must be delivered. (*New.*)

CHAPTER IV.

APPEARANCE, ETC.

45. When a defendant is served within Ontario, he shall appear within ten days, including the day of service. C.R. 168 and 130, *amended*.

46. A defendant shall appear by filing with the proper officer a memorandum in writing, if he appears by solicitor, stating the name and place of business of such solicitor, or, if he appears in person, stating that he defends in person, and giving his address and naming a place to be called his address for service, which shall not be more than two miles from the office from which the writ of summons was issued. (*See Form No. 6.*) C.R. 169.

47. If the memorandum does not contain the address of the solicitor or the defendant (as the case may be) it shall not be filed; and if such address is illusory or fictitious, the appearance may be set aside. C.R. 170.

48. Where a defendant desires to contend that an order for service out of Ontario could not properly be made, a conditional appearance may be entered by leave. C.R. 173.

49. A defendant may appear at any time before judgment. C.R. 175, *amended*.

50. A defendant appearing to a writ, indorsed to recover a money demand, may, in his appearance, state that he disputes only the amount claimed. The plaintiff may thereupon proceed to take an account of the amount due to him before the officer with whom the judgment is to be signed on four clear days' notice, and judgment may be signed for the amount found due, or the plaintiff may move for a judgment of reference. C.R. 176.

51.—(1) A defendant in an action for dower, may, with his appearance, file an acknowledgment that he is tenant of the freehold of the land named in the writ, together with his consent that the plaintiff may have judgment for her dower therein, and may take the proceedings authorized by *The Dower Procedure Act* to have the same assigned to her, unless the parties otherwise agree, and he shall forthwith serve the plaintiff or her solicitor with a copy of such acknowledgment and consent, and upon such consent the plaintiff may enter judgment of seisin, and may obtain a writ of assignment of dower, but shall not, without an order, be entitled to tax or recover the costs of the action or judgment against the defendant.

(2) The entry of a judgment of seisin and the taking of proceedings for the assignment of her dower thereunder shall not prevent the plaintiff from proceeding with the action for the recovery of arrears of dower or damages.

(3) Where the defendant has filed and served such acknowledgment and consent, and the plaintiff does not within 3 months thereafter sue out and cause to be executed a writ of assignment of dower, the defendant may, by leave, sue out such writ; and the writ shall be, as nearly as may be, in the same form as a writ sued out by the plaintiff, and the like proceedings shall be had thereon. C.R. 177 and 178.

52. In an action for dower the landlord or other person under whom a tenant in possession, who is not also tenant of the freehold, holds or entered into possession, may, without leave, appear and defend, by filing with his appearance an affidavit that he is tenant of the freehold, and is advised and believes that there is good ground for disputing the plaintiff's claim to dower. C.R. 179.

53. Any person not named as a defendant in a writ for the recovery of land, may, without leave, appear and defend, by filing with his appearance an affidavit stating that he is in possession either by himself or his tenant (as the case may be). C.R. 180.

54. Any person entering an appearance under the two preceding rules, shall forthwith give notice thereof, and shall in all subsequent proceedings be named as a party defendant; if notice of appearance is not forthwith given the plaintiff may proceed as in case of non-appearance. C.R. 183.

55. Any person appearing to a writ for the recovery of land may limit his defence to a part only of the land, describing the part with reasonable certainty in his appearance, or in a notice to be served within four days after appearance. C.R. 184.

56.—(1) Where the writ is specially indorsed the defendant shall with his appearance file an affidavit that he has a good defence upon the merits and shewing the nature of his defence, with the facts and circumstances which he deems entitle him to defend the action and shall forthwith serve a copy of such affidavit upon the plaintiff. The affidavit may be made by the defendant or by any one having knowledge of the facts.

(2) If the plaintiff so elects he may then treat the claim indorsed upon the writ, and the affidavit, as constituting the record, and may within five days serve notice of trial. In such case the defendant shall be entitled to 21 days' notice of trial.

(3) Either party may then have discovery and shall make production as in ordinary cases.

(4) If the defendant fails to file an affidavit the appearance shall not be received and the plaintiff shall be entitled to sign judgment for default of appearance.

(5) A defendant may obtain leave to deliver a statement of defence setting up any further or other answer to the plaintiff's claim. *New.*

CHAPTER V.

MOTION FOR JUDGMENT ON SPECIALLY INDORSED WRITS AND IN ACTIONS FOR ACCOUNT.

57.—(1) Where the defendant appears to a writ specially indorsed and files the affidavit required by Rule 56, the plaintiff may cross-examine upon such affidavit and move for judgment, and if the Court is satisfied that the defendant has not a good defence to the action on the merits,

or has not disclosed such facts as may be deemed sufficient to entitle him to defend the action, judgment may be given for the plaintiff.

(2) Such motion may be made in respect of a cause of action specially indorsed, though the writ may also be indorsed with any other claim.

(3) On any such motion any amendment of the writ which might be ordered on a substantive motion may be directed, and judgment may be awarded in accordance with the writ as amended. C.R. 603. *Amended.*

58. Where the defence disclosed applies only to a part of the plaintiff's claim, or any part of his claim is admitted to be due, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to, or as is admitted to be due, subject to such terms, if any, as to suspending execution, or payment into Court as may seem just, and the defendant may be allowed to defend as to the residue of the plaintiff's claim, or a reference may be directed under Rule 61. C.R. 604.

59. Judgment may be awarded and execution issued against any defendant without prejudice to the plaintiff's right to proceed against any other defendant. C.R. 605.

60. On any such motion, an order may be made, giving the defendant leave to defend either unconditionally, or subject to such terms as may seem just, or for a speedy trial of the action upon such terms as may be deemed proper. C.R. 606. *Amended.*

61. On any such motion, if it appears that the defence disclosed is substantially only as to the amount recoverable, the Court may direct a reference, and either pronounce judgment to take effect on the confirmation of the report, or reserve further directions and questions of costs for consideration after the report is made. C.R. 607.

62. Where a writ is specially indorsed and some special reason for urgency is shewn the plaintiff may, at any time, by leave, serve notice of motion for judgment. Such leave may be given *ex parte* and subject to such directions, as to the service of the notice of motion and filing and service of the affidavits and otherwise, as may seem just. C.R. 608. *Amended.*

63. In default of appearance when the plaintiff's claim is for an account, the plaintiff may apply for a judgment for the taking of the account claimed, with all directions usual in similar cases. C.R. 645.

64. Where the plaintiff's claim is for an account and appearance is entered the plaintiff may move for judgment, without pleading, and unless the defendant satisfies the Court that there is some preliminary question to be tried the appropriate judgment shall be pronounced. *New.*

65. The Court may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that some special or further relief is sought, or some issue is to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner. C.R. 646.

CHAPTER VI.

PARTIES AND JOINDER OF CAUSES OF ACTION.

(i) *Generally.*

66. All persons may be joined in an action as plaintiffs in whom any right to relief in respect of or arising out of the same transaction or occurrence, or series of transactions or occurrences, is alleged to exist, whether jointly, severally, or in the alternative, where if such persons brought separate actions any common question of law or fact would arise; but, if, upon the application of a defendant, it appears that such joinder may embarrass or delay the trial of the action, the Court may order separate trials, or make such other order as may be expedient; and without any amendment, judgment may be given for such one or more of the plaintiffs as may be found entitled to relief, for such relief as he or they may be entitled to but the defendant, though unsuccessful, shall be entitled to his costs occasioned by joining any person who is not found entitled to relief, unless the Court otherwise orders. C.R. 185.

67.—(1) Where the plaintiff claims that the same transaction or occurrence, or series of transactions or occurrences, give him a cause of action against one or more persons, or where he is in doubt as to the person from whom he is entitled to redress, he may join as defendants all persons against whom he claims any right to relief, whether jointly, severally, or in the alternative; and judgment may be given against one or more of the defendants according to their respective liabilities.

(2) The Court may order separate trials or make such other order as may be deemed expedient, if such joinder is deemed oppressive or unfair. *New.*

68. It shall not be necessary that every defendant to an action shall be interested as to all the relief claimed, or as to every cause of action included therein. C.R. 187.

69. A plaintiff may unite, in the same action, several causes of action. C.R. 232.

70. A claim by or against husband and wife may be joined with a claim by or against either of them separately. C.R. 234.

71. A claim by or against an executor or administrator may be joined with a claim by or against him personally, provided the last mentioned claim is alleged to have arisen with reference to the estate represented by him in the action. C.R. 235.

72. A claim by plaintiffs jointly may be joined with a claim by them or any of them separately against the same defendant. C.R. 236.

73. If several causes of action joined in the same action are such as cannot be conveniently disposed of in one action, the Court may order any of them to be excluded, or may direct the issues respecting the separate causes of action to be tried separately. C.R. 237.

74.—(1) Trustees, executors, and administrators may sue and be sued on behalf of, or as representing, the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested, and shall represent them; but the Court may at any time order any of them to be made parties in addition to, or in lieu of, the previous parties. C.R. 193.

(2) This Rule shall apply to an action to enforce a security by foreclosure or otherwise. Eng. Rule 130.

(NOTE.—As to parties to foreclosure actions where no personal representative. See 10 Edw. VII. ch. 56, sec. 10.)

75. Where there are numerous persons having the same interest, one or more may sue or be sued, or may be authorized by the Court to defend, on behalf of, or for the benefit of all. C.R. 200.

76. Where the right of an heir-at-law or of the next of kin, or of a class, or of an unborn person, depends upon the construction of an instrument, and it is not known or is difficult to ascertain who is such heir-at-law or next of kin or class, and the Court deems it convenient to have the question determined

before the heir-at-law, next of kin or class in question is ascertained, or before the birth of any unborn person, the Court may appoint some person to represent the heir-at-law, next of kin or class, or unborn person, and the judgment of the Court shall be binding upon the person or class or unborn person so represented. C.R. 201.

77. The Court, may appoint some person to represent, for the purposes of any action or proceeding, the interest of any person or class, who may be not ascertained or who may be unborn, and the judgment of the Court shall be binding upon the person or class so represented. C.R. 237.

78. Where in a proceeding concerning a trust a compromise is proposed and some of the persons interested in the compromise are not parties to the proceeding, but there are other persons in the same interest before the Court and assenting to the compromise, the Court if satisfied that the compromise will be for the benefit of the absent persons, and that to require service on them would cause unreasonable expense or delay, may approve the compromise and order that the same shall be binding on the absent persons, and they shall be bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts. *New. See Eng. Rule 131a.*

79. A residuary legatee, or next of kin, may have a judgment for the administration of the personal estate of a deceased person without serving the other residuary legatees or next of kin. C.R. 202.

80. A legatee interested in a legacy charged upon real estate, or a person interested in the proceeds of real estate directed to be sold, may have a judgment for the administration of the estate of a deceased person without serving any other legatee or person interested in the proceeds. C.R. 202.

81. A residuary devisee, or heir, may have the like judgment, without serving any other residuary devisee, or heir. C.R. 202.

82. One *cestui que trust*, under an instrument, may have a judgment for the execution of the trusts of the instrument, without serving the other *cestuis que trustent*. C.R. 202.

83. In actions for the protection of property, and in cases in the nature of waste, one person may sue on behalf of himself, and of all persons having the same interest. C.R. 202.

84. An executor, administrator, or trustee, may obtain a judgment against any one legatee, next of kin or *cestui que*

trust, for the administration of the estate or the execution of the trusts. C.R. 202.

85. An assignee of a chose in action may sue in respect thereof without making the assignor a party. C.R. 202.

86. The Court may require any other person to be made a party to an action to which Rules 79 to 84 apply, and may give the conduct of the action to such party as it deems proper; and may make such order as it deems just for placing the plaintiff on the record on the same footing in regard to costs as other persons having a common interest with him in the matter in question. C.R. 202.

87. Where a reference is directed the persons who, but for Rules 79 to 84, would have been necessary parties, shall be served with an office-copy of the judgment (unless the Court or Master dispenses with such service) indorsed with a notice according to Form No. 41, and after such service they shall be bound by the proceedings in the same manner as if they had been originally made parties; and upon notice to the plaintiff they may at their own risk as to costs require notice to be given them to enable them to attend the proceedings under the judgment. Any person so served may apply to the Court to add to, vary, or set aside the judgment within ten days from the date of such service. C.R. 202.

88. In administration proceedings no person other than the executor or administrator shall, unless by leave, be entitled to appear on the claim of any person against the estate of the deceased. C.R. 204.

89. The Court, if it thinks fit, may pronounce a judgment saving the rights of all persons not parties. C.R. 205.

90. Where it appears that a deceased person who was interested in the matters in question has no personal representative, the Court may either proceed in the absence of any person representing his estate or may appoint some person to represent the estate for all the purposes of the action or other proceeding, on such notice as may seem proper, notwithstanding that the estate in question may have a substantial interest in the matters, or that there may be active duties to be performed by the person so appointed, or that he may represent interests adverse to the plaintiff, or that administration of the estate whereof representation is sought is claimed; and the order so made and any orders consequent thereon, shall bind the estate of such deceased person, in the same manner as if a duly appointed personal representative of such person had been a party to the action or proceeding. C.R. 194.

(ii) *Infants and Lunatics.*

91. An infant may sue by his next friend; and may defend by his guardian appointed for that purpose, or by the Official Guardian, as the case may be. C.R. 197.

92. Where an infant defendant is not represented by the Official Guardian, a guardian may be appointed for him by the Court. C.R. 155.

93. A person desirous of appointing a guardian for himself other than the Official Guardian to defend an action or matter, may go before a Judge with the proposed guardian. He must satisfy the Judge by affidavit that the proposed guardian is a fit person, and has no adverse interest; and the Judge may examine the proposed guardian, or the person making the affidavit, *vivâ voce*, or require further evidence to be adduced until he is satisfied of the propriety of the appointment. C.R. 221.

94. A person of unsound mind (not so found by inquisition or judicial declaration) may sue by his next friend, and may defend by his guardian. C.R. 217.

95.—(1) Where no appearance has been entered to a writ of summons for a defendant who is a person of unsound mind not so found, the plaintiff may apply for an order that a guardian of such defendant be appointed, by whom he may appear and defend.

(2) No such order shall be made unless it appears that the writ was duly served, and that notice of the application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in the notice named for hearing the application, served upon, or left at the dwelling-house of, the person with whom the defendant resides, or under whose care he is at the time of serving such notice.

(3) The Official Guardian shall be appointed, unless for good reason it is otherwise directed. C.R. 218.

96. Where a person of unsound mind not so found by inquisition or judicial declaration is served with an office copy of a judgment or order or is made a party after judgment, a guardian *ad litem* shall be appointed for him after the like notice. C.R. 219.

97. A lunatic who has been so found may sue or defend by his committee. C.R. 217.

98. A person who has been declared incompetent under *The Lunacy Act* shall be represented by any person who may be authorized under the provisions of that Act. *New.*

99. Unless otherwise ordered, before the name of any person is used, as next friend or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the office in which the cause or matter is commenced. C.R. 198.

(iii) *Partners, etc.*

100. Any two or more persons (whether British subjects or not and whether residing within or without Ontario) claiming or being liable as partners, and carrying on business within Ontario, may sue or be sued in the name of the firm of which such persons were co-partners at the time of the accruing of the cause of action. C.R. 222.

101. Where persons are sued as partners in the name of the firm the writ shall be served either upon any one or more of the partners, or at the principal place within Ontario of the business of the partnership, upon any person having the control or management of the partnership business there; and such service shall be deemed good service upon the firm whether any of the members thereof are without Ontario or not, but in the case of a partnership which has been dissolved to the knowledge of the plaintiff before action, the writ of summons shall be served upon every person within Ontario sought to be made liable. Every person so served shall be informed by notice in writing given at the time of service whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters. In default of such notice the person served shall be deemed to be served as a partner. C.R. 223 and 224.

102. Persons sued as partners in the name of the firm shall appear individually in their own names, but all subsequent proceedings shall continue in the name of the firm. C.R. 225.

103. Where a writ is served upon a person as the person having the control or management of the partnership business an appearance by him shall not be necessary unless he is a member of the firm. C.R. 226.

104. A person served as a partner may (1) enter an appearance under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving the firm and obtaining judgment against the firm in default of appearance if no partner has entered an appearance in the ordinary form; or (2) enter an appearance not only denying that he is a partner, but also disputing the plaintiff's claim. C.R. 227.

105.—(1) Where a judgment or order is obtained against a firm, execution may issue against the property of

- (a) The partnership;
- (b) Any person who has by his appearance or notice, under Rule 14 or pleading, admitted that he is, or who has been adjudged, to be a partner;
- (c) Any person who has been served as a partner with the writ of summons and has failed to appear.

(2) If the party who has obtained the judgment or order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply for leave so to do; and the Court may give such leave if the liability be not disputed, or, if disputed, after such liability has been determined in such manner as the Court may direct. C.R. 228.

106. A judgment against a firm in the firm name shall not release, render liable or affect any member thereof who was out of Ontario when the writ was issued and who has not appeared thereto, unless he has been sued either within Ontario or in accordance with the Rules respecting service out of Ontario, but this provision shall not prevent the enforcement of the judgment against partnership property. C.R. 228, *part.*

107. Rules 100 to 106 shall apply to actions between a firm and one or more of the members and to actions between firms having one or more members in common, if the firm or firms carry on business within Ontario, but execution shall not issue in such actions without leave, and, on application for leave, all such accounts and inquiries may be ordered and directions given as may seem just. C.R. 230.

108.—(1) Any person (whether a British subject or not, and whether residing within or without Ontario) carrying on business within Ontario in a name or style other than his own name, may be sued in such name or style.

(2) The writ may be served upon the person so carrying on the business if he be within Ontario, or at the place of business within Ontario (or if there are several such places, at the place within the county in which the cause of action arose), upon any person having the control or management of the business there.

(3) The person upon whom the writ is served shall be informed by notice in writing, given at the time of service,

whether he is served as the person carrying on the business or as a person having the control or management of it, and in default of such notice he shall be deemed to be served as the person carrying on the business.

(4) The person so sued shall appear in his own name, but all subsequent proceedings shall continue in such name or style.

(5) A person served as the person carrying on the business may enter an appearance under protest denying that he is the person so carrying on the business, but such appearance shall not preclude the plaintiff from otherwise serving the person sued or from obtaining judgment in default of appearance in the ordinary form by the person so sued.

(6) Any judgment or order in the action may be enforced by execution against

(a) The property of the person so sued, used or employed in or in connection with the business.

(b) Any property of a person who by his appearance or by notice under Rule 14, has admitted that he is or has been adjudged to be the person carrying on the business, or has been served with the writ as the person carrying on the business and has failed to appear.

(7) When judgment has been signed for default of appearance and the writ has not been personally served upon the person whom the plaintiff alleges to be carrying on the business, the Court may give leave to issue execution against such person if his liability be not disputed, or, if disputed, after it has been determined in such manner as the Court may direct. C.R. 231, *amended*.

CHAPTER VII.

PLEADINGS.

General Provisions.

109.—(1) The plaintiff shall state the nature of his claim and the relief sought in a pleading to be called the Statement of Claim and may therein alter, modify, or extend his claim as endorsed upon the writ. C.R. 242 and 244.

(2) When a defendant has not appeared and the statement of claim alters, modifies, or extends the relief claimed, the plaintiff shall not be entitled to judgment on default of

defence unless the statement of claim is served personally or in pursuance of an order for substitutional service. *New.*

110. The plaintiff shall deliver his statement of claim within one month from the entering of appearance or at any time before appearance and where there is more than one defendant the statement of claim shall be delivered within a month from the last appearance or from the time when the last appearance should have been entered. C.R. 243.

111. Where the writ is specially indorsed such indorsement shall be treated as a statement of claim and no other statement of claim shall be necessary. C.R. 245, *amended.*

112.—(1) Where the writ is specially indorsed and the plaintiff does not elect under Rule 56 to serve a notice of trial the defendant may deliver a defence or counter-claim at any time within 10 days after his appearance.

(2) Where the writ is not specially indorsed the defendant may deliver his defence and counter-claim within 10 days from the delivery of the statement of claim or from the time limited for appearance, whichever shall be last. C.R. 246 and 247, *amended.*

113. Where a defendant sets up a counter-claim which raises questions between himself and the plaintiff and any other person he shall add a second style of cause in which he shall be described as "Plaintiff by Counter-claim" and the plaintiff and such other person shall be described as "Defendants by Counter-claim," and shall deliver his counter-claim to such of them as are parties to the action within the period limited for the defence and shall serve the same without delay upon such of them as are not parties to the action together with a summons according to Form No. 25, issued from the proper office and a copy of the statement of claim. C.R. 248 and 249, *amended.*

114. Any defendant to a counter-claim, shall within ten days after service thereof on him, deliver a defence thereto. C.R. 250.

115. A defendant may set up by way of counter-claim, any right or claim whether the same sounds in damages or not. C.R. 251.

116. A counter-claim shall be treated as an action, so as to enable the Court to pronounce a final judgment upon all matters set up therein. C.R. 252.

117.—(1) Where a defendant does not dispute the plaintiff's claim, but sets up a counter-claim, the Court may

stay proceedings respecting the claim until the counter-claim is disposed of. C.R. 255.

(2) Where a plaintiff does not dispute the defendant's counter-claim the Court may stay proceedings upon the counter-claim until the claim is disposed of. *New.*

118. A plaintiff shall deliver his reply, if any, within 10 days after the defence or the last of the defences has been delivered. C.R. 256.

119. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave. C.R. 257.

120. As soon as either party has joined issue upon any pleading of the opposite party, or as soon as the time for delivering a reply or subsequent pleading has expired, the pleadings shall be deemed to be closed. C.R. 262.

121. Where any party makes default in delivering a statement of defence to the statement of claim or to the counter-claim within the time limited therefor, in cases where judgment cannot be signed, the opposite party may, upon proof of the default, by *praecepe* to the officer with whom the pleadings are filed, require him to note the default, and thereafter no pleading by the party in default shall be received or filed. Until default is so noted the party in default may file his pleading. C.R. 263, *amended.*

122. Either party shall be entitled to raise by his pleading any point of law, and by consent of the parties, or by leave of a judge, the same may be set down for hearing at any time before the trial, otherwise it shall be disposed of at the trial. C.R. 259.

123. Upon the determination of such point of law the Court may pronounce such judgment as may be deemed proper. C.R. 260.

124. A Judge may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in any such case, or in case of the action or defence being shown to be frivolous or vexatious, may order the action to be stayed or dismissed, or judgment to be entered accordingly. C.R. 261.

125. Where an issue is directed to be tried it shall, if the parties differ, be settled in chambers, and as soon as settled be filed in the office in which the proceedings are carried on, and thereafter the proceedings in the issue shall

be carried on in the same manner as the proceedings in an action. C.R. 377, *amended*.

126.—(1) The parties to any cause may concur in stating questions of law arising, in the form of a special case for the opinion of the Court; and may agree that on the judgment of the Court being given in the affirmative or negative of the question or questions of law raised, certain specific relief may be awarded.

(2) Upon the argument of the case the whole contents of the documents referred to therein may be read, and the Court may draw from the facts and documents any inference, either of fact or law, as at a trial. C.R. 372.

127. A plaintiff may, without leave, amend his statement of claim, including a claim specially endorsed on the writ, once, either before the statement of defence has been delivered, or after it has been delivered and before the expiration of the time limited for reply, and before replying. C.R. 300 and 1247.

128. Where a plaintiff has amended his statement of claim the opposite party shall plead thereto or amend his pleading within the time he then has to plead, or within ten days from the delivery of the amendment, whichever shall last expire, and in case the opposite party has pleaded before the delivery of the amendment and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment. C.R. 302.

129. Either party may amend his pleadings at any time on filing the written consent of the opposite party. C.R. 303.

130. An amendment may be made by leave of the Court, or of the Judge at the trial, and such amendment shall be at once made on the face of the record. C.R. 304.

131. A party who has obtained leave to amend shall make the amendment within the time limited by the order, or if no time is limited, within ten days from the date of the order. C.R. 305.

132. A pleading may be amended by written alterations in the copies filed and served and by additions on paper to be interleaved therewith if necessary; unless the amendments are so numerous or of such a nature that making them in the copies filed and served would render the same difficult or inconvenient to read; in either of which cases the

amendment shall be made by delivering a re-print or fresh copy of the pleadings as amended. C.R. 306.

133. Where a pleading is amended a memorandum shall be made in the margin stating the date of and authority for the amendment, and the amendment shall be written or underlined in ink of a different colour from that used in the original pleading. C.R. 307.

134.—(1) The Court may, at any stage of the proceedings, order that the name of a plaintiff or defendant improperly joined, be struck out, and that any person who ought to have been joined, or whose presence is necessary in order to enable the Court effectually and completely to adjudicate upon the questions involved in the action, be added; or where an action has through a *bona fide* mistake been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court may order any person to be substituted or added as plaintiff.

(2) No person shall be added or substituted as a plaintiff, or as the next friend of a plaintiff, without his own consent in writing thereto to be filed.

(3) Parties added or substituted as defendants shall, unless otherwise ordered, be served with the amended writ of summons, and the proceedings as against them shall be deemed to have begun only at the time when they are added. C.R. 206 and 313.

135. If a statement of claim has been delivered previously to a defendant being added, it shall be amended in such manner as the making of the new defendant a party may render desirable; and a copy of the amended statement of claim shall also be delivered to the new defendant. C.R. 208.

136. The Court may order that any pleading, petition or affidavit, or any part of a pleading, petition or affidavit, which is scandalous, be taken off the file, or may direct the scandalous matter to be expunged. C.R. 296.

137. Any pleading which may tend to prejudice, embarrass, or delay the fair trial of the action may be struck out or amended. C.R. 298.

138. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading or special endorsement, may in all cases be ordered. C.R. 299.

GENERAL RULES OF PLEADING.

139. Every writ, pleading or other document, may be printed, typewritten, or written in whole or in part. C.R. 265.

140. Every pleading shall be filed, and served upon all parties concerned therewith, and shall be marked on the face with the date of filing, and with the title of the action, the description of the pleading, and the name and place of business of the solicitor and agent (if any) of the party filing the same, or the name and address of the party filing the same if he does not act by a solicitor. C.R. 266, *amended*.

141. Pleadings shall contain a concise statement of the material facts upon which the party pleading relies, but not the evidence by which they are to be proved; dates, sums and numbers shall be expressed in figures. C.R. 268.

142. Each party shall admit such of the material allegations contained in the pleading of the opposite party as are true, and a defendant shall not deny generally the allegations contained in the statement of claim but shall set forth the facts upon which he relies even though this may involve the assertion of a negative. C.R. 269, *amended*.

143. A defendant to an action or counter-claim shall raise all matters which show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as for instance, fraud, Statute of Limitations, release, payment, performance, facts showing illegality either by statute or Common Law, or Statute of Frauds. C.R. 271.

144. Save as otherwise provided, the silence of a pleading as to any allegation contained in the previous pleading of the opposite party shall not be construed as an admission of the truth of such allegation. C.R. 272.

145. Every statement of claim and counter-claim shall state specifically the relief claimed, either simply or in the alternative, and may also ask for general relief. When damages are claimed the amount shall be named. C.R. 273.

146. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the party relying thereon, and an averment of the performance or occurrence of all conditions precedent necessary for the case by the plaintiff or defendant shall be implied in his pleading. C.R. 1304.

147. Where the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof. C.R. 275.

148. Where it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact, without setting out the circumstances from which the same is to be inferred. C.R. 276.

149. Where it is material to allege notice to a person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact unless the form or precise terms of the notice is or are material. C.R. 277.

150. Where a contract or relation between persons does not arise from an express agreement, but is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege the contract or relation as a fact. C.R. 278.

151. Neither party need in any pleading allege any matter of fact which the law presumes in his favour, or as to which the burden of proof lies upon the other side.

[*E.g.*—Consideration for a bill of exchange.] C.R. 279.

152. If either party wishes to deny the alleged constitution of any partnership, or the right of any other party to claim as executor, or as trustee, or as assignee in insolvency, or in any representative or other alleged capacity, he shall deny the same specifically, or the same will be taken to be admitted. C.R. 280.

153. Unless the incorporation of a corporate party is specifically denied, it shall not be necessary to prove it. C.R. 281.

154. Where a contract is alleged, a denial of the contract shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise. C.R. 282.

155. A defendant in an action for the recovery of land who is in possession by himself or his tenant need not plead his title, unless his defence depends on an equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff; but, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession, and he may rely upon any ground of defence which he can prove. C.R. 285.

156. Where a defendant by virtue of any statute enabling him so to do pleads not guilty by statute he shall in his defence refer to the statute giving the right so to plead, and also to all statutes upon which he relies, giving chapter and section in every such reference, and if so required shall deliver particulars of his defence. C.R. 286 and 287, *amended*.

157. A subsequent pleading shall not raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same. C.R. 288.

158. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, he shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the presiding Judge, unless in his pleading or by notice given seven days at least before the trial he furnishes particulars in writing to the plaintiff of the matters as to which he intends to give evidence. C.R. 488, *amended*.

159. A ground of defence or counter-claim which has arisen after action, but before the defendant has delivered his statement of defence, may be pleaded either alone or with other grounds of defence. C.R. 289.

160. If, after a counter-claim has been delivered, a ground of defence thereto arises it may be pleaded in answer thereto. C.R. 290.

161. Where a ground of defence or counter-claim arises after the delivery of the statement of defence or counter-claim, the defendant may within ten days after such ground of defence or counter-claim has arisen, deliver a further defence or counter-claim, setting forth the same, or introduce the same by amendment into his statement of defence or counter-claim. C.R. 291.

162. Where a ground of defence to any counter-claim arises after the delivery of the defence thereto the defendant to the counter-claim may within 10 days after such ground of defence has arisen, deliver a further pleading setting forth the same, or may set up such new ground of defence by amendment. C.R. 292.

163. Any such amendment may be made on *præcipe*, C.R. 293, *amended*.

164. Where any defendant pleads any ground of defence or counter-claim which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence; and he may thereupon sign judgment for his costs up to the time of the pleading of such defence unless otherwise ordered. C.R. 295.

CHAPTER VIII.

THIRD PARTY PROCEDURE.

165.—(1) Where a defendant claims to be entitled to contribution or indemnity from or any other relief over against any person not a party to the action, hereinafter called a third party, he may issue a notice in accordance with Form 24 (hereinafter called the third party notice) which shall be sealed in the same manner as the writ of summons, and shall state the nature and grounds of the claim.

(2) A copy of the notice shall be filed, and a copy together with a copy of the statement of claim or, if there be no statement of claim, of the writ, shall be served on the third party within the time limited for the delivery of the defence. C.R. 209.

166. If a third party desires to dispute the plaintiff's claim in the action as against the defendant or his own liability to the defendant, he shall enter an appearance within ten days from the service of the notice, and in default of his so doing, he shall be deemed to admit the validity of any judgment obtained (whether by consent or otherwise) against such defendant, and his own liability to contribute or indemnify, claimed in the third party notice. C.R. 210.

167. Where the third party makes default in entering an appearance, the defendant giving the notice, in case he suffers judgment by default, shall be entitled at any time to move for judgment against the third party to the extent of the contribution, indemnity or relief over claimed in the third party notice. C.R. 211.

168. Where a third party makes default in entering an appearance, if the action is tried and results in favour of the plaintiff, the Judge who tries the action may, at or after the trial, direct such judgment as the nature of the case may require, to be entered for the defendant giving the notice against the third party. C.R. 212.

169. Where the third party appears pursuant to the third party notice, the defendant giving the notice may apply for directions, and the Court may order the question of liability, as between the third party and the defendant giving the notice, to be tried in such manner at or after the trial of the action, as may seem proper; and may give the third party liberty to defend the action, upon such terms as may be just, or to appear at the trial and take part therein, and generally may order such proceedings to be taken and give such directions as may appear proper for having the question between the defendant and the third party most conveniently determined, and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action. C.R. 213.

170. Where a defendant claims to be entitled to contribution or indemnity from or relief over against any other defendant, a notice may be issued and the same procedure shall be adopted as if such last mentioned defendant were a third party, except that a copy of the statement of claim or writ need not be served with the third party notice, and service may be effected upon the solicitor in the action, if any, of the defendant sought to be made liable as a third party. C.R. 215.

171. A plaintiff is not to be prejudiced or unnecessarily delayed by reason of questions between the defendant and the third party in which he is not concerned; and such directions shall be given and terms imposed as may be necessary to prevent delay of the plaintiff, where it can be done without injustice to the defendants and third party. C.R. 216.

CHAPTER IX.

TIME AND VACATIONS.

172. Where a period of less than 6 days is prescribed holidays shall not be reckoned. C.R. 343.

173. (1) Where a number of days not expressed to be clear days is prescribed the same shall be reckoned exclusively of the first day, and inclusively of the last day.

(2) Where the days are expressed to be clear days, or where the term "at least" is added, both days shall be excluded. C.R. 344.

174. Where the time for doing any act or taking any proceeding expires on a holiday the act or proceeding may be done or taken on the next juridical day. C.R. 345.

175. Any time prescribed may be enlarged or abridged by consent in writing, without order. Con. Rule 478. C.R. 347.

176. The Court may from time to time enlarge or abridge the time prescribed by the Rules, or by an order, for doing any act or taking any proceeding, and this power may be exercised although the application is not made until after the expiration of the time prescribed. C.R. 353.

177. The Vacations shall be:

- (a) The Long Vacation consisting of the months of July and August.
- (b) The Christmas Vacation consisting of the period from the 24th day of December to the 6th day of the following January, both days inclusive. C.R. 354.

178. An examination shall not be held nor shall pleadings be amended or delivered in the Long Vacation, except by consent or by direction of the Court, but when a writ is to be served out of the jurisdiction, and in Mechanic's Lien proceedings, the statement of claim may be delivered in vacation. C.R. 351 and 439.

179. Unless otherwise directed by the Court, the time of the Long Vacation, or of the Christmas Vacation, shall not be reckoned in the computation of the times appointed or allowed by these Rules for filing, amending, or delivering any pleading, or in the times allowed for the following purposes:

- (a) Appeals to a Judge in Chambers;
- (b) Reports becoming absolute;
- (c) Moving to discharge an order adding a party;
- (d) Moving to add to, vary, or set aside a judgment by a party served therewith;
- (e) Doing an act or taking a proceeding in appealing to a Divisional Court of the Appellate Division. C.R. 352.

180. One or more of the Judges shall be selected for the hearing in Toronto during Long and Christmas Vacations of

all such applications as may require to be promptly heard. C.R. 114.

181. All applications within the jurisdiction of the Master in Chambers which require to be immediately or promptly heard during Long Vacation shall be heard by one of the following officers, viz., the Master in Ordinary, the Master in Chambers, and the Registrars, who shall arrange among themselves before the commencement of each Long Vacation on what days and for what period each shall act; and in the absence of such arrangement the duty shall devolve upon them in rotation, beginning with the junior officer in order of appointment, and they shall sit at least one day in each week. C.R. 115.

182. The præcipe for any cheque to be issued during the Long Vacation shall be lodged in the Accountant's Office on or before the 20th day of July, unless otherwise directed by a Judge. C.R. 413 and 1257.

CHAPTER X.

MISCELLANEOUS PROVISIONS.

(i) *Effect of Non-compliance and Errors.*

183. A proceeding shall not be defeated by any formal objection, but all necessary amendments shall be made, upon proper terms as to costs and otherwise, to secure the advancement of justice, the determining the real matter in dispute, and the giving of judgment according to the very right and justice of the case. C.R. 309 and 312.

184. Non-compliance with the Rules shall not render the writ or any act or proceeding void, but the same may be set aside, either wholly or in part, as irregular, or may be amended, or otherwise dealt with, as may seem just.

185. An application to set aside any proceeding for irregularity shall be made within a reasonable time, and shall not be allowed if the party applying has taken a fresh step after knowledge of the irregularity. C.R. 311.

186. Where an amendment is directed or allowed at the trial, it shall not be necessary to issue an order therefor. The amendment, unless otherwise directed, shall be at once made on the record. C.R. 314 and 1445.

187. Where an amendment of any record of the Court or document filed, other than a pleading, is directed, no physical alteration of the record or document shall be made, but a note shall be made, in the margin or other convenient place, of the amendment directed. C.R. 315.

(ii) *Form of Documents, Size of Paper, Etc.*

188. (1) All pleadings, affidavits, judgments, orders and other documents shall be printed, typewritten, or written in a clear and legible manner, with a margin upon the left hand side, upon foolscap paper of good quality. C.R. 319 *amended*.

(2) When documents are printed, pica type, leaded, shall be used.

189. No notice shall be given orally. C.R. 316.

190.—(1) In all proceedings in an action, except pleadings, and judgments, and reports, the following short style of cause shall be sufficient:

“ Between John Smith and others,—*Plaintiffs*,
and
Richard Roe and others,—*Defendants*.”

(2) In case of proceedings which it has been the practice to entitle more shortly thus: “*Smith v. Roe*,” such practice shall continue. Con. Rule 451.

(3) In proceedings under any particular Act (*e.g.* the Mechanics’ Lien Act), the style of cause shall be “In the matter of—(*naming the statute*), “Between A.B., Plaintiff, and C.D., Defendant” (or “A. B., Applicant” and C. D., Respondent”). C.R. 320 and 1235.

(iii) *Copies and Service of Papers.*

191. Where service of affidavits and other documents is required, true copies, legibly written, typewritten, or printed, are to be served. C.R. 322.

192. Where an office copy of an order or judgment is directed to be served it shall be certified by the officer in whose office the order or judgment is entered. C.R. 323.

193. A party requiring a copy of any affidavit, exhibit, or document not directed to be served shall serve a demand for the same and a copy shall be served with all convenient speed. C.R. 324 and 325.

194. A party entitled to copies of or extracts from, any document in possession of another party, may be directed to pay for such copy at the rate of 10 cents per folio, if the request for such copy is deemed unreasonable, or the solicitor of the party producing the document shall be at liberty to give notice that the party requiring such copy is at liberty at some reasonable time and place to himself make it, in which case the party producing shall not be entitled to any fee in respect thereof. C.R. 326, *amended*.

195. A book to be called "The Toronto Solicitors' and Agents' Book," shall be kept in the Central Office to be there inspected by any party or solicitor or his clerk without fee; and every solicitor having an office or carrying on his business within the said city, shall cause to be entered in such book (in alphabetical order) his name and place of business or some other proper place within the city where he may be served, and as often as any such solicitor changes his place of business or the place where he may be so served as aforesaid, he shall cause to be made the like entry thereof in the said book. C.R. 90.

196. Every other practising solicitor shall cause to be entered in the said book (in alphabetical order) his name and place of business, and also in an opposite column the name of some solicitor having an office and carrying on business in the city of Toronto as his agent. C.R. 91.

197. Every Deputy or Local Registrar shall keep in his office a book to be called "The County Solicitors' and Agents' Book," in which each solicitor residing within the County elsewhere than in the County Town, and not having an office there, shall specify the name of an agent, being a solicitor of the Supreme Court, and having an office in such County Town, as his agent with respect to business carried on in the local offices in the said town. C.R. 92.

198. Admissions and acceptances of the service of an order, notice of motion or other paper, upon the opposite solicitor, need not be verified by affidavit. C.R. 328.

199.—(1) Documents which do not require personal service shall be served upon the solicitor of the party to be served or his agent entered in the Toronto or County "Solicitors' and Agents' Book."

(2) Such service may be made by leaving the document to be served with any clerk in the solicitor's office.

(3) Where a solicitor has not caused such entry to be made, the posting up of a copy of any document in the office in which the proceedings are being carried on is to be deemed sufficient service. C.R. 329.

200.—(1) Where a party sues or defends in person and no address for service of such party is given, or where a party has ceased to have a solicitor, or where a defendant served with a writ of summons or notice in lieu thereof has not appeared thereto, all documents not requiring personal service shall, unless the Court otherwise directs, be deemed to be sufficiently served by posting up a copy in the office in which the proceedings are being carried on.

(2) If an address for service is given, then all documents shall be sufficiently served upon such party if left for him at such address. C.R. 330.

201. Where at the time of attendance to serve any document, the office of the solicitor for the party upon whom the service is sought to be made is closed or no one is in attendance therein for receiving documents served, service of the document may be effected by mailing the same, at any time during the same day, addressed to the solicitor, at his office, by registered post, and the service shall be deemed to have been effected at the time of the attendance for that purpose at the office of the solicitor. C.R. 331.

202. Service upon an execution creditor may be effected by serving the solicitor issuing the execution. C.R. 332, *amended*.

203. It shall not be necessary to regular service that the original document shall be shown, unless sight thereof is demanded. C.R. 333.

204. Service shall, unless otherwise ordered, be effected during vacation and on Saturdays before 2 o'clock in the afternoon, and on other days before the hour of four o'clock in the afternoon, and service effected after those hours shall be deemed to have been made on the next juridical day. C.R. 349.

CHAPTER X.

MOTIONS IN COURT AND CHAMBERS.

205. The power conferred upon the Court may be exercised by a Judge sitting in Court, and, when so provided by the Rules, by a Judge in Chambers or the Master in Chambers, or a Local Judge in Chambers, or any Master or Referee to whom any cause or matter is referred. *New.*

206. Any power conferred upon the Court may be exercised upon such terms as to costs and otherwise as may be deemed just. *New.*

207. The following applications shall be disposed of in Chambers:

1. For the sale, lease or mortgaging of the estates of infants.
2. As to the custody, guardianship, maintenance, and advancement of infants;
3. For administration or partition without action;
4. Relating to the conduct of actions or matters;
5. For the payment into Court of moneys under The Trustee Act.
6. To vacate certificates of *lis pendens*.
7. Appeals from the Master in Chambers and Local Judge.
8. Motions for judgment under Rules 57 to 62.
9. Applications under the Lunacy Act.
10. Applications for and on the return of a writ of Habeas Corpus.
11. Motions for mandamus, prohibition, or interpleader.
12. Motions to wind up companies under the Dominion and Ontario Acts.
13. Motions for payment of money out of Court.
14. Originating motions under Rule 600, clauses (c), (d), (f) and (i). C.R. 366. *Amended.*

208. The Master in Chambers is empowered and required to dispose of all applications properly made in Chambers save in respect to the following matters:

1. Matters relating to criminal proceedings, or the liberty of the subject;
2. Appeals and applications in the nature of Appeals;
3. Extending the time for appealing to a Divisional Court of the Appellate Division;
4. Applications for arrest;
5. Proceedings as to Lunatics;
6. Originating notices other than applications for administration, partition or interpleader.
7. Applications as to the custody, maintenance or guardianship of infants, or the sale, lease, mortgage of or dealing with infants' estates or settled estates.
8. Opposed applications for judgment for partition or Administration.
9. Applications for Prohibition or Mandamus.
10. The payment of money out of Court, or dispensing with payment of money into Court, in administration and partition matters.
11. Allowing taxed costs in lieu of commission under the provisions of Rule 653.
12. Striking out a jury notice except for irregularity.
13. Any matter which is expressly required to be done by a Judge.
14. The removal of causes from Inferior Courts.
15. The making of orders for references under *The Arbitration Act*.
16. Staying proceedings after verdict, or judgment at a trial. C.R. 42, *amended*.

Local Judges and Local Masters.

209. A Local Judge and a Local Master who does not practise as a Barrister or Solicitor or take out a certificate entitling him to practise shall in all causes and matters in his county and in interpleader proceedings where the goods in respect of which interpleader is sought are situate in his county, have concurrent jurisdiction with, and the same power and authority, as the Master in Chambers at Toronto. C.R. 45.

210.—(1) A Local Judge shall, in actions brought and proceedings taken in his county, possess the like powers as a Judge sitting in Court or Chambers with regard to:—

- (a) Motions for judgment in undefended actions;
- (b) Motions to appoint receivers after judgment by way of equitable execution;
- (c) Applications for leave to serve short notice of a motion to be made before a Judge sitting in Court or Chambers.

And where the solicitors for all parties reside in his county or agree that the same shall be heard before him any motion or application except

- i. Applications for taxed or increased costs under Rule 653.
- ii. Motions for injunction, save as provided in Rule 211.
- iii. Motions to strike out a jury notice save for irregularity.

(2) Where an infant or lunatic or person of unsound mind is concerned the powers conferred by this Rule shall not be exercised without the consent of the Official Guardian, or of the committee or guardian of or the person authorized to act on behalf of the lunatic or person of unsound mind. C.R. 47. *Amended.*

211.—(1) A Local Judge may in cases of emergency grant an *ex-parte* injunction in any action brought in his County upon proof to his satisfaction that the delay required for an application to a Judge is likely to involve a failure of justice, but such injunction shall not be for a longer period than eight days.

(2) If all parties interested consent, the Local Judge may hear any motion to continue, vary or dissolve the injunction. C.R. 46, *amended*.

212. Motions for partition or administration may be made before a Judge in Chambers or the local Judge of the County where the land (or if more than one parcel, any parcel) is situate or the testator or intestate died. C.R. 956.

General Provisions as to Motions.

213. Any application in an action or proceeding shall be made by motion, and notice of the motion shall be given to all parties affected by the order sought. C.R. 355 and 356. *Amended*.

214. If on the hearing of a motion it appears that any person to whom notice has not been given ought to have had notice, the Court may either dismiss the motion or adjourn the hearing thereof in order that notice may be given. C.R. 360.

215.—(1) Except where otherwise expressly provided unless leave is given there shall be at least 2 days between the service of a notice of motion in an action and the day for hearing.

(2) Unless leave is given there shall be at least 7 days between the service of an originating notice and the day for hearing. C.R. 348. *Amended*.

216. If satisfied that the delay necessary to give notice of motion might entail serious mischief, the Court may make an interim order *ex parte*. C.R. 357.

217. A party affected by an *ex parte* order, or any party who has failed to appear on an application through accident or mistake, or insufficient notice of the application, may move to rescind or vary the order before the Judge or officer who made the same, or any Judge or officer having jurisdiction, within four days from the time when the order comes to his notice. C.R. 358.

218. Every notice of motion by way of appeal shall specify the grounds intended to be argued. C.R. 363.

219. A notice of motion to set aside a proceeding for irregularity shall specify the irregularity complained of and the objections intended to be insisted on. C.R. 362.

220. The Court may direct any application to be turned into a motion for judgment. C.R. 617.

221. When upon an application for an interim injunction or upon any other motion it appears expedient to direct an early trial, the Court may make such order as may be deemed necessary to secure an early hearing, either at the place named for trial or such other place as may be convenient. *New. See English Rule 657a.*

222. A party may, at any stage of an action, apply for such judgment or order as he may, upon any admissions of fact in the pleadings, or in the examination of any other party, be entitled to; and it shall not be necessary to wait for the determination of any other question between the parties; or he may so apply where the only evidence consists of documents and such affidavits as are necessary to prove their execution or identity without the necessity of any cross-examination, or where infants are concerned, and evidence is necessary so far only as they are concerned, for the purpose of proving facts which are not disputed. C.R. 616.

223.—(1) The Court may adjourn for consideration in Chambers any motion or matter brought before it which should have been brought on in Chambers or which, though properly brought on in Court, may, in the opinion of the Court, be disposed of more conveniently in Chambers; and any motion or matter brought on in Chambers which should have been brought on in Court may be adjourned into Court.

(2) Any motion or matter improperly brought before the master in Chambers or a Local Judge may be adjourned by him before the Court or a Judge in Chambers. C.R. 367. *Amended.*

224. Where an infant or lunatic is a defendant or interested in a fund in Court, no order in any way affecting his interest shall be made without notice to his guardian *ad litem* or committee. C.R. 359. *Amended.*

225. An attendance on a motion in Chambers, or on an appointment before a Master, Registrar, or other officer, for half an hour next immediately following the return thereof, shall be deemed a sufficient attendance, and no such motion shall be made or matter be proceeded with *ex parte*, before the expiry of such half-hour. C.R. 350.

226. Evidence upon a motion may be given by affidavit. C.R. 489.

227. A person who has made an affidavit to be used upon a motion or at a trial or on a reference, may be cross-examined thereon, before any officer having jurisdiction in

the county in which the witness resides, upon being served with a subpoena for that purpose. C.R. 490.

228. Any party may by subpoena require the attendance of a witness to be examined, before any officer having jurisdiction in the county in which the witness resides, for the purpose of using his evidence upon any motion. C.R. 491.

229. Witnesses may by leave of the Court be examined *vivâ voce* before the Court upon any motion. C.R. 493.

230. The Court may order the sheriff, gaoler, or other officer having the custody of any prisoner, to produce him for any examination authorized by these Rules or as a witness at a trial. C.R. 495.

231. Where money is directed to be paid into a Bank, the certificate of the cashier, manager, agent, or like officer of the Bank, of default in making such payment, shall be sufficient evidence of such default. C.R. 497.

232.—(1) On all appeals, or hearings in the nature of appeals, and on all motions for a new trial, the Court or Judge appealed to shall have all the powers as to amendment and otherwise of the Court, Judge or officer appealed from, and full discretionary power to receive further evidence, either by affidavit, oral examination before the Court or Judge appealed to, or as may be directed.

(2) Such further evidence may be given without special leave as to matters which have occurred after the date of the judgment, order or decision from which the appeal is brought.

(3) Upon appeals from a judgment at the trial, such further evidence (save as mentioned in subsection (2)) shall be admitted on special grounds only, and not without leave of the Court. C.R. 498.

233. Upon any motion the Court shall have power to direct the trial of an issue upon oral evidence and may enlarge the motion before the Judge at the trial of the issue. *New.*

234.—(1) A Judge shall sit in Chambers on Tuesday and Friday, and in Court on Monday, Wednesday and Thursday in each week, except in vacation. C.R. 99.

(2) All papers for use in the Court at Toronto shall be filed in the Registrar's office and all papers for use in Chambers shall be filed with the Clerk in Chambers, and when no longer required all such papers and all papers forwarded for

use on the motion shall be transmitted to the office in which the proceedings were commenced. C.R. 102. *Amended.*

(3) All papers to be used on a Chamber motion to be heard by a Judge in Chambers shall be left with the Clerk in Chambers on the day before that on which the motion is to be heard, and shall be marked with the name of the office where the proceedings were commenced. *New.*

(4) All documents sent from local offices to Toronto shall be sent to The Central Office, and the necessary return postage or express charge shall be transmitted therewith.

(5) Unless otherwise directed by the Judge, *ex parte* and unopposed motions in Chambers shall be heard before contested motions and appeals. C.R. 369.

(6) Motions and other matters to be heard in Court, except *ex parte* applications, shall be set down for argument, in the Registrar's office, on *præcipe*, at least on the day before the day of argument, and a list of the cases set down shall be posted up the day before the day for which the same are set down, and a copy shall be furnished to the Registrar or other officer who is to attend the sittings of the Court. C.R. 364.

239. Sittings shall be held at Ottawa and London on at least one day in each week, except during vacation; and all proceedings in any action or matter which may be heard before a Judge may be heard and determined at such Sittings:—

- (a) Where the motion is *ex parte*;
- (b) Where the solicitors for all parties reside in the county in which the sittings are held;
- (c) Where such solicitors who do not so reside consent to the proceeding being heard at such sittings; or register their names in the book to be kept as hereinafter provided; or
- (d) Where a Judge may direct any proceedings to be heard at such sittings. C.R. 104.

240. The Deputy Clerks of the Crown at Ottawa and London respectively, shall act as registrar and clerk of the Court. C.R. 107.

241. All proceedings to be brought on at any such sittings shall be entered for that purpose with the Deputy Clerk of the Crown on or previously to the day next but one before the day appointed for the sittings; and it shall be the duty of the Deputy Clerk on the evening of that day to telegraph the Senior Registrar at Toronto, advising him what business has been so entered, and the Registrar shall forthwith inform the Judge appointed to attend at such sittings; and if no business has been so entered it shall not be necessary for any Judge to attend. C.R. 109.

242. Where the Judge appointed is unable to attend, such sittings may be presided over by any other Judge or by a Judge of any County Court, upon such Judge of a County Court being requested by a Judge to attend for that purpose. C.R. 110.

243.—(1) Any solicitor may file with the Deputy Clerk of the Crown at the place of such sittings a request to the effect following:—

I, _____, desire to be registered as consenting to the hearing and disposal at the sittings at Ottawa (or London as the case may be) of all proceedings in which I may be acting as solicitor.

(2) A book to be called "The Consent Register," which shall be open to inspection by any solicitor or his clerk without fee, shall be kept by the Deputy Clerk of the Crown at Ottawa and London respectively, wherein shall be recorded such requests and the names of the local agents (if any) of the solicitors filing the request.

(3) A solicitor who files such request may at any time withdraw the same by giving to the same officer notice in writing to that effect, and the Deputy Clerk upon receiving such notice shall forthwith make an entry thereof in the said book. C.R. 111 and 112.

CHAPTER XI.

TRIALS.

244. At any sittings appointed for the trial of actions any motion which may be made before a Judge in Court or in Chambers may be made if:—

- (a) The solicitors for all parties consent; or
- (b) The matter in controversy arose in the County; or
- (c) The party opposing or showing cause or his solicitor resides in the county. C.J.A., sec. 91.

245.—(1) Subject to any special statutory provisions the place of trial of an action shall be regulated as follows:—

- (a) The plaintiff shall, in his statement of claim, or where the writ is specially indorsed, in the indorsement, name the county town at which he proposes that the action shall be tried;
- (b) Where the cause of action arose and the parties reside in the same county the place to be named shall be the county town of that county;
- (c) Save in mortgage actions, where possession of land is claimed, the place to be named shall be the county town of the county in which the land is situate;
- (d) The action shall be tried at the place so named, unless otherwise ordered upon the application of either party. C.R. 529.

246. After the close of the pleadings either party may give notice of trial. C.R. 530.

247. Where interlocutory judgment has been signed against any defendant for default of appearance or pleading, ten days' notice of assessment of damages shall be given to him. Such notice and proof of service shall be filed when the action is set down. C.R. 537. *Amended.*

248. Except in actions to be tried at Toronto, without a jury;

- (a) Ten days' notice of trial shall be given before entering an action for trial;

- (b) After notice of trial is given, either party may enter the action for trial, and if both parties enter the action for trial at the same sittings it shall be tried in the order of the plaintiff's entry;
- (c) Actions shall be entered for trial not later than the sixth day before the commencement of the sittings; but a Judge may permit any action to be entered after the time above limited;
- (d) An action which is to be tried without a jury, may be entered for trial at any sittings appointed for the place named for the trial of such action. C.R. 538. *Amended.*

249. The party entering an action for trial shall, at the time of entry (or, in the cases to which Rule 250 applies, at or before the time when the notice of trial is to be filed), deposit a record containing a certified copy of the pleadings and particulars and of any order containing directions respecting the trial. C.R. 539. *Amended.*

250.—(1) Actions to be tried at Toronto without a jury may be set down for trial by either party immediately after the close of the pleadings.

(2) Notice of trial shall be given, by the party setting down the action for trial, within two days thereafter, and he shall within four days after so setting down the action, file the notice of trial and proof of the service thereof, with the officer with whom the action was set down.

(3) Where default is made in filing the notice of trial, any party who has been served therewith may within four days after such default, file in like manner the notice of trial served on him and proof of the service thereof.

(4) Where a notice of trial is filed, the action shall be placed upon the list of cases for trial upon the expiration of three weeks from the date of the setting down.

(5) If two or more parties have entered the action for trial, it shall be tried in the order of the first entry. C.R. 542.

251. An action may be withdrawn from trial, upon consent. C.R. 543.

252. Actions not tried or disposed of after being once entered for trial shall not, except in the case of actions entered for trial without a jury at Toronto, be heard at any

subsequent sittings unless a fresh notice of trial is given and the action has been again set down, but no fee shall be payable for such setting down. C.R. 544. *Amended.*

253. If, when an action is called on for trial, the defendant appears, and the plaintiff does not, the defendant shall be entitled to judgment dismissing the action, and if he has a counter-claim may prove such claim. C.R. 546.

254. The Judge at the trial shall, at the request of either party, order a witness to be excluded from the Court until he is called to give evidence, and also, if the Judge deems it expedient, a party intending to give evidence; or he may require such party to be examined before the other witnesses on his behalf, and the Judge may, in his discretion, exclude the testimony of any witness or party who does not conform to such order. C.R. 547.

255. The Judge may in all cases disallow any question put to a witness which may appear to the Judge to be vexatious and not relevant to any matter proper to be enquired into at the trial. *New.* Eng. Rule 462.

256.—(1) At the trial, the addresses to the jury shall be regulated as follows:—

(a) At the conclusion of the case of the party who begins, if the opposite party states his intention to be not to adduce evidence, and he has not adduced evidence, the party who begins shall have the right to address the jury for the purpose of summing up the evidence, and the opposite party shall have the right to reply;

(b) If the opposite party does not state his intention to be not to adduce evidence, or if he has adduced evidence, he shall have the right to open his case, and (after the conclusion of such opening), to adduce such evidence as he thinks fit, and when all the evidence is concluded, to sum up the evidence, and the party who begins shall have the right to reply;

(2) Where a defendant claims a remedy over against a co-defendant, he shall have the right to address the jury after the co-defendant.

(3) Where a party is represented by counsel, the right conferred by this Rule shall be exercised by his counsel. C.R. 548.

257. Where, through accident or mistake or other cause, a party omits or fails to prove some fact material to his case, the Judge may proceed with the trial, subject to such fact being afterwards proved at such time as the Judge shall direct; and, if the case is being tried by a jury, the Judge may direct the jury to find a verdict as if such fact had been proved, and the verdict shall take effect on such fact being afterwards proved as directed; and if not so proved, judgment shall be entered for the opposite party, unless the Judge otherwise directs, but this Rule shall not apply to an action for defamation. C.R. 549.

258. Where equitable issues are raised by the pleadings, they shall, unless the trial Judge otherwise directs, be tried, and the damages, if any, incidental thereto, assessed by the Judge without the intervention of a jury. C.R. 550.

259. Where both legal and equitable issues are raised, and notice for a jury has been given, the action shall be entered for trial at the jury sittings, and such issues shall be tried at the same time, unless the Judge presiding at the trial otherwise directs. C.R. 551. *Amended.*

260. Damages in respect of any continuing cause of action shall be assessed down to the time of the assessment. C.R. 552.

261. A party shall not be entitled to judgment at the trial or on motion on the ground of his pleading being true, if the facts proved are not sufficient in point of law to entitle him to judgment. C.R. 610.

262. If in action to recover land the plaintiff is, at the time of the service of the writ, entitled to possession, but his right afterwards expires, he may by leave discontinue the action, and the costs shall be in the discretion of the Court.

263.—(1) Exhibits shall be numbered, and the Registrar attending the trial shall, at the conclusion thereof, make a list of the exhibits, giving a description of each exhibit, and stating by whom it was put in. The exhibits of each party shall be classified separately in such list. C.R. 555 and 556.

(2) The exhibits shall remain in Court until judgment is given and during any stay of proceedings, and thereafter shall be delivered out, without order, upon the application of either party upon notice to the other, unless an appeal is taken, when the exhibits shall be retained until the appeal is disposed of. C.R. 557.

(3) Where exhibits have not been applied for within five years from the date of a trial the officer in whose custody they are, may notify the solicitors for the parties that unless they are applied for in three months they will be destroyed, and unless such exhibits are applied for within that period he may by leave of a Judge destroy them. *New.*

264. The verdict and judgment shall be indorsed on the Record, and shall also be recorded by the Registrar or officer acting as clerk at the sittings in a book to be kept for recording the proceedings thereat. C.R. 558. *Amended.*

265. The Judge by whom any cause or matter is tried with or without a jury, and the Court before which any cause or matter is brought by way of appeal, may inspect any property or thing concerning which any question arises therein, and where the sanity of a party is in question, may examine him for the purpose of determining his sanity. C.R. 570. *Amended.*

266. A party may apply for an order for the inspection by himself or by his witnesses, of any real or personal property, the inspection of which may be material to the proper determination of the question in dispute. (See also Rule 370.) C.R. 571.

267. A view by the jury may be ordered by the Judge presiding at the trial. C.R. 572. *Amended.*

268. The Court may obtain the assistance of merchants, engineers, accountants, actuaries, or scientific persons, in such way as it thinks fit, the better to enable it to determine any matter of fact in question in any cause or proceeding, and may act on the certificate of such persons. C.R. 94.

CHAPTER XIII.

EVIDENCE.

269. The witnesses at the trial of an action or an assessment of damages shall be examined *viva voce* and in open Court, but a Judge may at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the trial, on such conditions as he may deem just, or that any witness whose attendance ought for some sufficient cause to be dispensed with, be examined before an examiner; but where the other party *bona fide* desires the production of a

witness for cross-examination, and such witness can be produced, an order shall not be made authorizing his evidence to be given by affidavit. C.R. 483.

270. All witnesses in any matter pending before a Master, shall be examined *vivâ voce*, unless it is otherwise ordered by the Master or by the Court on special grounds. C.R. 484.

271. The Court may, in any cause or matter where it appears necessary for the purposes of justice, make an order for the examination upon oath before an officer of the Court or any other person and at any place, of any person, and may permit such deposition to be given in evidence. C.R. 485.

272. Service of a notice to produce may, in the absence of an admission of service, be proved by an affidavit of the solicitor in the cause, or his clerk. C.R. 487.

273. A subpoena may be issued at any time in blank and may be completed by the solicitor or party, and any number of names may be inserted in one subpoena. C.R. 478, *amended*.

274. (1)—No subpoena for the production of an original record, or of an original document from any registry office, shall be issued, but an order for its production or transmission may be made which shall be obeyed by the officer in whose custody it is.

(2) Except in special circumstances requiring or justifying the production of the original, no such order shall be made where the document may be proved by a certified copy. Any officer required to produce a document shall be entitled to be paid ordinary witness fees. C.R. 479, *amended*.

275. Where a party desires to call an opposite party as a witness at the trial, if he is within the jurisdiction, he may either subpoena such party, or give him or his solicitor at least five days' notice of the intention to examine him as a witness in the cause, paying at the same time the amount proper for conduct money; and if such party does not attend on such notice or subpoena judgment may be pronounced against him, or the trial of the action may be postponed. C.R. 481, *amended*.

276. Upon proof to the satisfaction of the presiding Judge of the service of a subpoena upon any witness who fails to attend or to remain in attendance in accordance with the re-

quirements of the subpoena, and that a sufficient sum for his fees as a witness had been duly paid or tendered to him, and that the presence of such witness is material to the ends of justice, the judge may by his warrant, directed to any sheriff or other officer of the Court, or to any constable, cause such witness to be apprehended anywhere within Ontario, and to be forthwith brought before the Court and detained in custody as the presiding Judge may order, until his presence as such witness is no longer required, or, in the discretion of the Judge, he may be released on a recognizance (with or without sureties) conditioned for his appearance to give evidence. C.R. 482.

277. Where the testimony of a person who is residing out of Ontario is required and for any reason an order under Rule 271 is not sufficient the Court may order the issue of a commission for the examination of such person. C.R. 499. *Amended.*

278. If a party for whose examination an order has been made or a commission has issued, refuses to attend before the examiner or Commissioner, judgment may pass against him. C.R. 500.

279. The notice of a motion for a commission to take evidence shall state the name and address of the commissioner proposed. C.R. 501.

280.—(1) Unless otherwise directed the examination shall be upon oral questions to be reduced into writing and returned with the commission and notice of the execution of the commission shall be given to the opposite party, if, within the time prescribed by the order, he gives the name and the address of a person resident within two miles of the place where the commission is to be executed, on whom such notice may be served.

(2) If no agent is named or the name or address given proves to be illusory or fictitious, or if the party so notified fails to attend pursuant to the notice, the commission may be executed *ex parte*. C.R. 502, 504 and 506.

281. Where the examination is to take place upon written interrogatories, the interrogatories in chief shall be delivered to the opposite party 8 days before the issue of the commission; and the cross-interrogatories shall be delivered to the opposite party within 4 days after the receipt of the interrogatories in chief; and in default of cross-interrogatories being so delivered, the commission may be executed without cross interrogatories. C.R. 503.

282. The witnesses shall be examined on oath, affirmation, or otherwise in accordance with the law of the country in which the commission is executed. C.R. 505.

283. Where a witness does not understand the English language the commission shall be executed with the aid of an interpreter nominated by the commissioner, and sworn to interpret truly the questions to be put to the witness, and his answers thereto, and the examination shall be taken in English. C.R. 507.

284. If a witness produces a book, document, letter, paper or writing, and refuses for good cause, to be stated in his deposition, to part with the original, a copy or extract certified by the commissioner shall be annexed to the deposition of the witness. C.R. 508.

285. The depositions may be taken in shorthand either by the commissioner or a shorthand writer duly sworn. C.R. 509 and 510.

286.—(1) Unless the examination is taken in shorthand the depositions shall be subscribed by the witness and by the commissioner.

(2) Where taken in shorthand it shall not be necessary that the depositions be read over or signed by the person examined unless counsel attending on the Commission so desires. C.R. 511.

287. The commission, interrogatories, depositions and any documents or certified copies thereof or extracts therefrom, referred to therein, shall be sent to the proper officer, on or before the day named in the order for the commission, enclosed in a cover under the seal of the commissioner; and the same or certified copies thereof may be given in evidence, saving all just exceptions, without any other proof of the absence from Ontario of the witness therein named than an affidavit of the solicitor or agent of the party as to his belief of such absence. C.R. 512.

288. Where the opposite party desires to join in the commission and examine witnesses on his own behalf thereunder, each party shall in the first instance pay the costs of the commission consequent upon the examination of his witnesses. C.R. 513.

289. A commission when returned shall at the request of either party be transmitted for use at the trial, and may be opened at the trial, or before trial at the instance of either

party by the officer to whom it is returned on two clear days' notice to the other party. C.R. 515.

290. Every order for a commission shall be read as if it contained the particulars mentioned in the next preceding ten rules, and shall not set forth the same, but may contain any variations therefrom, and any other directions, which the Court sees fit to make. C.R. 514.

291. An affidavit shall be drawn up in the first person, stating the name of the deponent in full, and his description and true place of abode, and shall be signed by him. C.R. 516.

292. In an affidavit made by two or more deponents the names of the persons making the affidavit shall be inserted in the jurat, but if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents. C.R. 517.

293. Affidavits shall be confined to the statement of facts within the knowledge of the deponent, but on interlocutory motions statements as to his belief, with the grounds thereof, may be admitted. C.R. 518.

294. In an action or proceeding to which a corporation is a party, any affidavit required by these Rules to be made by a party may be made by any officer, servant, or agent of the corporation having knowledge of the facts required to be deposed to, and he shall state therein that he has such knowledge. C.R. 519.

295. An affidavit having in the jurat or body thereof any interlineation, alteration, or erasure shall not be used without leave unless the interlineation, alteration or erasure is authenticated by the initials of the officer taking the affidavit. C.R. 520.

296. Where an affidavit is sworn by a person who appears to be illiterate, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, who seemed perfectly to understand it, and signed it in his presence; otherwise such affidavit shall not be used without leave. C.R. 521.

297. An affidavit sworn before the solicitor of the party on whose behalf it is made, or before the clerk, or partner, of such solicitor, shall not be used; but this Rule shall not extend to an affidavit to obtain an order for arrest. C.R. 522.

298. Affidavits upon which a notice of motion is founded shall be filed before the service of the notice of motion and all other affidavits shall be filed before they are used. C.R. 524.

299. Where properly marked exhibits are referred to in an affidavit filed, and are not annexed thereto, such exhibits need not be filed, but shall be left for the use of the Court, and shall be handed out on the disposal of the motion unless otherwise ordered. C.R. 526.

CHAPTER XIV.

PARTICULAR PROCEEDINGS IN ACTIONS.

(i) *Transmission of Interest.*

300. If by reason of death (when the cause of action survives or continues) or by assignment or conveyance any estate, interest or title devolves or is transferred the action may be continued by or against the person to or upon whom such estate or title has come or devolved. C.R. 395.

301. Where a change or transmission of interest or liability has taken place or where by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and the new party, may be obtained on praecipe. C.R. 396.

302. Such order and a notice according to form No. 40, shall be served upon the continuing parties or their solicitors, and upon the new party. C.R. 397.

303. A person served with such order may apply to the Court to discharge or vary the order at any time within 10 days from the service thereof. C.R. 398.

304. When death takes place after verdict or finding of the issues of fact but before judgment, judgment may be entered notwithstanding the death, whether the cause of action would, apart from this rule, survive or not. C.R.

305. Where a plaintiff has died and proceedings may be continued, the defendant may apply to the court on notice to compel the person entitled to proceed with the action to proceed according to the provisions of these Rules within such time as the Court may order, and that in default the action be dismissed for want of prosecution. C.R. 403.

306. Where an action is so dismissed an order for payment of costs may be made and enforced against the goods and lands which were of the deceased plaintiff. C.R. 404, *amended*.

(ii.) *Payment into Court with a Pleading, in Satisfaction.*

307. A defendant may, either before or at the time of delivering his defence, or afterwards by leave of the Court, pay into Court a sum of money in satisfaction of the cause or a part of the cause of action, or of one or more of the causes of action for which the plaintiff sues, and the money when so paid in shall remain in Court subject to further order unless the plaintiff elects to take it out as hereinafter provided. C.R. 419.

308. Payment of money into Court shall not, unless expressly so stated, be deemed an admission of the cause of action in respect of which it is paid. C.R. 420.

309. With a defence setting up a tender before action, the sum alleged to have been tendered shall be brought into Court. C.R. 428.

310. Payment into Court shall be pleaded, and in the pleading the cause of action or part thereof, in respect of which the payment is made, shall be specified. C.R. 421.

311. A defendant paying money into Court before delivering his defence shall serve upon the plaintiff a notice stating that he has paid in the money, and specifying the claim or cause of action in respect of which the payment has been made. C.R. 422.

312. The plaintiff may take the money out of Court in satisfaction of the cause of action, or part thereof, in respect of which it was paid in, upon filing and serving a memorandum (Form 27), which shall be equivalent to a satisfaction piece. C.R. 423.

313. The plaintiff shall make his election to take the money out of Court within four days after the day on which he receives notice of payment in if the payment is made

before defence, and if the money is paid in with the defence he shall elect before the expiration of the time for replying, and before replying. C.R. 424.

314. Where the defendant does not allege tender before action and the plaintiff takes the money in satisfaction of all the causes of action he may tax his costs of the action, and issue execution therefor, unless the defendant pays them within forty-eight hours after taxation. C.R. 425, *amended*.

315. Where the defendant alleges tender before action and the plaintiff elects to take the money in satisfaction unless otherwise ordered the defendant may tax his costs and the amount allowed him shall be paid to him out of the money in Court and the balance shall be paid the plaintiff. *New.*

316.—(1) Where money is paid into Court and liability is not admitted and the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, but proceeds with the action in respect of such claim or cause of action, the money shall remain in Court and be subject to the order, and shall not be paid out of Court except in pursuance of an order or upon the consent of both parties.

(2) If the plaintiff proceeds with the action in respect of such claim or cause of action, or any part thereof, and recovers less than the amount paid into Court, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and the balance (if any) shall be repaid to the defendant, but if the defendant succeeds in respect of such claim or cause of action, the whole amount shall be repaid to him. *New. See English Rule 260c.*

317. A plaintiff may, in answer to a counter-claim, pay money into Court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into Court by a defendant. C.R. 427.

318. A defendant paying money into Court shall in his præcipe state the rule under which he is paying it in. *New.*

319. Money accepted by the plaintiff in satisfaction may be paid out to him without order, upon the pleadings and notice of acceptance being transmitted to the Accountant, who shall return the same to the proper office after having made the necessary entries in his books. C.R. 423.

iii. Consolidation of Actions.

320. Actions may be consolidated by order of the Court. C.R. 435.

iv. Discontinuance.

321.—(1) The plaintiff may, at any time before receipt of the statement of defence of any defendant, or after the receipt thereof before taking any other proceeding in the action (save an interlocutory application) by notice in writing, filed and served, wholly discontinue his action against such defendant or withdraw any part thereof; and the defendant shall be entitled to the costs of the action, if wholly discontinued against him, or if not wholly discontinued to the costs occasioned by the part withdrawn.

(2) A plaintiff may discontinue as to one or more of several defendants.

(3) Such costs may be taxed upon production of the notice served, and if not paid within four days from taxation the defendant may issue execution therefor.

(4) Such discontinuance or withdrawal shall not be a defence to any subsequent action.

(5) Except as provided by the preceding subsection a plaintiff shall not discontinue without leave of the Court, which may be granted upon such terms as to costs and as to any other action against all or any of the defendants, and otherwise as may be proper. C.R. 430.

322. A defendant may withdraw his defence or any part thereof, by written notice filed and served. C.R. 431.

v. Dismissal of Actions for want of Prosecution.

323. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, at the expiration of such time the action may be dismissed for want of prosecution. C.R. 432.

324. In actions to be tried without a jury at Toronto, if the plaintiff does not set down the action for trial within six weeks after the pleadings are closed and proceed to trial as provided in Rule 250 the action may be dismissed for want of prosecution. C.R. 434.

325.—(1) In all other actions if the pleadings are closed six weeks before the commencement of any sittings for which the plaintiff might give notice of trial, and he does not give notice of trial therefor and enter the action for trial, the action may be dismissed for want of prosecution. C.R. 433.

(2) Where there are separate sittings for the trial of actions with and without a jury the plaintiff shall not be considered in default for failure to enter a non-jury action at the jury sittings. *New.*

326.—(1) When an action has been discontinued or dismissed for want of prosecution a defendant who has counter-claimed may, if he so elects, proceed with the trial of his counter-claim, and if he elects to proceed he shall give notice of his election within 10 days after the discontinuance or dismissal of the action, and the counter-claim shall then be liable to dismissal for want of prosecution for failure to proceed to trial.

(2) In default of such election the counter-claim shall on the discontinuance or dismissal of the action be regarded as dismissed without costs. *New.*

vi. *Examination for Discovery.*

327.—(1) A party to an action whether plaintiff or defendant, may, without order, be orally examined before the trial touching the matters in question by any party adverse in interest, and may be compelled to attend and testify in the same manner, upon the same terms, and subject to the same rules of examination as a witness except as hereinafter provided.

(2) In the case of a Corporation any officer or servant of such Corporation may, without order, be orally examined before the trial touching the matters in question by any party adverse in interest to the Corporation, and may be compelled to attend and testify in the same manner and upon the same terms and subject to the same rules of examination as a witness except as hereinafter provided; but such examination shall not be used as evidence at the trial.

(3) After the examination of an officer or servant of a Corporation a party shall not be at liberty to examine any other officer or servant without an order. C.R. 439 and 1250.

328. Where a party to be examined is out of Ontario the Court may order the examination to be taken at such place and in such manner as may seem just and convenient, and service of the order and of all papers necessary to obtain the examination may be made on the solicitor of the party, and any conduct money may be paid to him unless the order makes other provisions therefor. C.R. 477, *amended*.

329. The Court may order the examination for discovery at such place and in such manner as may be deemed just and convenient of an officer residing out of Ontario of any Corporation party to an action, and service of the order and of all papers necessary to obtain such examination may be made upon the solicitor for such party, and conduct money may be paid to him, and if the officer fails to attend and submit to such examination pursuant to such order the Corporation shall be liable if a plaintiff to have its action dismissed, and if a defendant to have its defence struck out and to be placed in the same position as if it had not defended. Such examination shall not be used in evidence at the trial. C.R. 1321.

330. Any party may, at the trial of an action or issue, use in evidence any part of the examination 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 so 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. C.R. 461.

331. Any person who refuses or neglects to attend at the time and place appointed for his examination, or refusing to be sworn or to answer any proper question put to him, shall be deemed guilty of a contempt of Court and proceedings may be forthwith had by attachment. He shall also be liable, if a plaintiff, to have his action dismissed, and if a defendant, to have his defence, if any, struck out. C.R. 454.

332. When an infant is a party the opposite party may examine the next friend or guardian of the infant or at his option the infant, if he is competent to give evidence. *New*.

333. Any person examined for discovery may be further examined on his own behalf, or on behalf of the Corporation whose officer or servant he is, in relation to any matter respecting which he has been so examined, and such explanatory examination shall be proceeded with immediately after the examination in chief. C.R. 449 and 450.

334. A person for whose immediate benefit an action is prosecuted or defended may without order be examined for discovery. C.R. 440, *amended*.

335. Where an action is brought by an assignee the assignor may without order be examined for discovery. C.R. 441.

336. Examination for discovery may take place at any time after the statement of defence of the party examining or to be examined has been delivered or after the pleadings have been noted as closed, and the examination of a party to an issue may take place at any time after the issue has been filed. C.R. 442, *amended*.

337.—(1) A party within Ontario shall attend for examination for discovery before the proper officer in the County in which he resides upon service of an appointment upon his solicitor seven days before the day appointed for the examination, and conduct money shall be paid or tendered to the solicitor.

(2) The solicitor shall forthwith communicate the appointment to the party required to attend, and shall not apply the money to any debt due to the solicitor or any other person, or pay the same otherwise than to such party for his conduct money, and the same shall not be liable to be attached.

(3) The attendance of a party may also be required under Rules 345 to 347.

vii. *General Rules as to Examinations.*

338. Rules 339 to 347 shall apply to the examination of a witness upon a motion or under an order and to cross-examination upon affidavits and to all examinations for discovery. C.R. 492, *amended*.

339. Any person examined shall be subject to cross-examination and re-examination; and the examination, cross-examination and re-examination shall be conducted as nearly as may be as at a trial. C.R. 451.

340.—(1) The examination (unless otherwise ordered or agreed) shall, if the examiner is a shorthand writer or a shorthand writer is available, be taken in shorthand by the examiner or by a shorthand writer approved and duly sworn by him and shall be taken down by question and answer; and it shall not be necessary for the depositions to be read over to, or signed by, the person examined.

(2) A copy of the depositions so taken, certified by the person taking the same as correct, and if such person be not the examiner, also signed by the examiner, shall be received in evidence saving all just exceptions. C.R. 457 and 458.

(3) The depositions taken by the examiner shall, upon payment of his fees, be returned to and filed in the office in which the proceedings are carried on. C.R. 459.

341. The person to be examined or any party to the action shall, if so required by the subpoena or notice, produce on the examination all books, papers and documents relating to the matters in issue which he could be required to produce at a trial. C.R. 448, *amended*.

342. Any person who admits, upon his examination, that he has in his custody or power any such document may be directed to produce the same for the inspection of the party examining by the examiner, and for that purpose a reasonable time is to be allowed. C.R. 452.

343. If any person under examination objects to any question put to him, the question and the objection shall be noted, and the validity of such objection shall be decided by the examiner, whose decision shall also be noted. C.R. 455, *amended*.

344. Any direction or ruling of the examiner shall be subject to review upon any motion with respect to such examination without an appeal. C.R. 453, *amended*.

345.—(1). Any party who is liable to be examined may be required to attend before the proper officer in the County in which he resides, for examination, upon being served with an appointment and upon payment of the proper fees.

2. Any person not a party, liable to be examined, shall also be served with a subpoena. C.R. 443, *amended*.

346. The party examining shall serve a copy of the appointment for such examination upon the solicitor of the opposite party at least forty-eight hours before the examination. C.R. 446.

347. An order may be made for the examination of any person liable to be examined as aforesaid before any other person or in any other County. C.R. 444.

viii. *Production of Documents.*

348. Each party, after the defence is delivered, or an issue has been filed, may by notice require the other within ten days to make discovery on oath of the documents which are or have been in his possession or power, relating to any matters in question in the action; and produce and deposit the same with the proper officer for the usual purposes. A copy of such affidavit shall be served forthwith after filing. C.R. 464.

349. The Court may at any time order production and inspection of documents generally or of any particular document in the possession of any party. C.R. 463.

350. When a document is in possession of a person not a party to the action and the production of such document at a trial might be compelled, the Court may at the instance of any party, on notice to such person and to the opposite party, direct the production and inspection thereof, and may give directions respecting the preparation of a certified copy which may be used for all purposes in lieu of the original. *New.*

351.—(1) A party shall be entitled to obtain the production, for inspection, of any document referred to in the pleadings or affidavits of the opposite party, by giving notice to his solicitor, and shall be entitled to take copies of such documents when so produced for inspection.

(2) The party to whom such notice is given, shall forthwith deliver to the party giving the same, a notice stating a time within two days from the delivery thereof, at which the document may be inspected at the office of his solicitor, and shall at the time named produce the document for inspection. C.R. 469 and 470.

352. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute should be determined before deciding upon the right to the discovery or inspection, may order that such issue or question be determined first, and reserve the question as to the discovery or inspection. C.R. 472.

353. If a party fails to comply with any notice or order for production or inspection of documents, he shall be liable

to attachment and shall also be liable, if a plaintiff, to have his action dismissed, and if a defendant, to have his defence, if any, struck out. Service of the notice of motion upon the solicitor of the party is, unless the Court otherwise directs, sufficient. C.R. 473 and 474.

ix. *Default of Pleading.*

354. A defendant who fails to deliver a statement of defence and against whom the pleadings have been noted as closed, shall be deemed to admit all the statements of fact set forth in the statement of claim.

355. Where a plaintiff would be entitled to sign judgment for default of appearance to the writ he shall be entitled to sign a similar judgment, *mutatis mutandis*, for default of defence. *New.*

356.—(1) In any other case the plaintiff may after the pleadings have been noted as closed move for judgment upon the statement of claim.

(2) Where default is made by one defendant and the action proceeds to trial as against another defendant such motion may be made at the trial. *New.*

357. Except by leave an action shall not be set down on motion for judgment for default, after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do. C.R. 612.

358. Where issues arise otherwise than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the Court may, at the trial or on motion, give such judgment as upon the pleadings may seem just. C.R. 594.

x. *Replevin.*

359.—(1) An order of replevin may be obtained.

1. On motion therefor on showing the facts of the wrongful taking or detention complained of, the value and description of the property, and that the person claiming it is the owner thereof, or is lawfully entitled to the possession thereof (as the case may be);

2. Or on *præcipe* if the person claiming the property, his servant or agent, makes an affidavit stating,

(a) That the person claiming the property is the owner or lawfully entitled to the possession thereof;

- (b) The value thereof;
- (c) That the property was wrongfully taken out of the possession of the claimant, or fraudulently got out of his possession, within two months next before making of the affidavit;
- (d) That the deponent is advised and believes that the claimant is entitled to the order;
- (e) And that there is good reason to apprehend that unless the order is issued without waiting for a motion, the delay would materially prejudice the just rights of the claimant in respect to the property.

3. Or on *proceipe* (in case the property was distrained for rent or damage feasant), if the person claiming the property, his servant or agent, makes an affidavit stating,

- (a) That the person claiming the property is the owner or is lawfully entitled to the possession thereof, (describing the property);
- (b) The value thereof;
- (c) That the property was taken under colour of a distress for rent or damage feasant;

and in such case the order shall state that the defendant has taken and unjustly detains the property, under colour of a distress for rent or damage feasant (as the case may be). C.R. 1068.

360. The motion shall be on notice to the defendant, unless the special circumstances of the case in the opinion of the Court justify the making of an *ex parte* order. The Court instead of granting or refusing the order may direct the sheriff to take a bond in less or more than treble the value of the property, or may direct him, in addition to taking a bond pursuant to Rule 369, to take and detain the property until the further order of the Court, instead of at once replevying the same to the plaintiff; or may order that the plaintiff instead of giving a bond be at liberty to pay into Court to the credit of the action, subject to further order, such sum as may be proper to stand as security to the defendant in the same manner and to the same extent as any bond which the plaintiff would otherwise be required to give to the Sheriff. C.R. 1069.

361. The defendant may apply to the Court to discharge, vary, or modify the order, or to stay proceedings thereunder, or for any other relief, with respect to the return, safety or sale of the property or any part thereof, or otherwise. C.R. 1070.

362.—(1) Before the Sheriff acts on the order he shall take a bond, Form 132, from the plaintiff with two sufficient sureties in such sum as may be prescribed by the order, or if no special provision has been made, then in treble the value of the property as stated in the order of replevin.

(2) The plaintiff may instead of giving a bond pay into Court twice the value of the goods as stated in the order, and the Sheriff may act upon a certificate of the Accountant that the money has been paid. C.R. 1072.

363. When an order of replevin is issued for any property which had not been previously taken out of the plaintiff's possession, and for which the plaintiff might bring an action for conversion, the defendant shall be entitled, if the plaintiff fails in the action, to be fully indemnified against all damages sustained by the defendant, including any extra costs which he may incur in defending the action; and the bond shall be conditioned so as to require the plaintiff and the sureties to indemnify and save harmless the defendant from all loss and damage which he may sustain by reason of the seizure, and of any deterioration of the property in the meantime, in the event of its being returned, and all costs, charges, and expenses which the defendant may incur, including reasonable costs not taxable between party and party. This provision shall not be required in cases of distress for rent or damage feasant. C.R. 1074.

364. The Sheriff shall not serve a copy of the writ of summons or order until he has replevied the property, or some part thereof if he cannot replevy the whole. C.R. 1075.

365. Where the order is issued on *præcipe* under Rule 359 (2) the Sheriff shall take and detain the property, and shall not replevy the same to the plaintiff without the order of the Court, but may, after seven days from the time of taking the same, re-deliver it to the defendant, unless in the meantime the plaintiff obtains and serves on the Sheriff an order directing a different disposition of the property. C.R. 1076.

366. The Sheriff shall return the order on or before the tenth day after the service thereof, and shall transmit annexed thereto,

- (a) The names of the sureties in, and the date of the bond taken from the plaintiff, and the name or names of the witnesses thereto;
- (b) The place of residence and addition of the sureties;
- (c) The number, quantity and quality of the articles of property replevied; and in case he has replevied only a portion of the property and cannot replevy the residue by reason of the same having been elaigned out of his county, or not being in the possession of the defendant or of any other person for him, he shall state in his return the articles which he cannot replevy and the reason therefor. C.R. 1077.

367.—(1) Where the Sheriff makes such a return of the property distrained, taken or detained having been elaigned, the Court may make an order (Form 86) directing the Sheriff to take in *withernam* goods and chattels of the defendant.

(2) Where a Sheriff makes return that the whole or any part of the property has been elaigned, or that for any reason the same cannot be replevied, the plaintiff may, if he so elect, serve the writ of summons, and in his statement of claim, claim either the return of the goods and damages for their detention, or damages for their conversion. C.R. 1078. *Amended.*

368. Where the plaintiff is entitled to sign judgment by default, he may sign final judgment for five dollars and costs, but shall not be entitled to recover a larger sum except upon an assessment or upon filing the consent of the defendant or his solicitor, and an affidavit verifying the signature to such consent. C.R. 1079.

xi. *Interim Preservation of Property, etc.*

369. Where there is a dispute arising upon a contract or any alleged contract affecting the title to any property the Court may make an order for the preservation or interim custody of such property, or may order that the amount in dispute be brought into Court or otherwise secured, or may order the sale of the property and the payment of the proceeds into Court. C.R. 1095.

370.—(1) The Court may, upon the application of any party and upon such terms as may seem just, make any order for the detention or preservation of property, being the subject of the action, or for the inspection of any property, the inspection of which is necessary for the proper determination of the question in dispute; and for all or any of the purposes aforesaid may authorize any person or persons to enter upon or into any land or building in the possession of a party and may authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence. (See also Rule 266). C.R. 1096.

(2) The Court may also on notice to any person not a party to the action make an order authorizing entry upon or into any lands or building in the possession of such person for the purposes of such inspection.

371. The Court may, at any time, order the sale, in such manner and on such terms as may seem just, of any goods, wares, or merchandise which may be of a perishable nature or likely to be injured from keeping, or which for any other reason it may be desirable to have sold at once. C.R. 1097.

372. Where a plaintiff seeks to recover specific property other than land, and the defendant does not dispute the title of the plaintiff, but claims to retain the property by virtue of a lien or otherwise as security for money, the Court may order that the plaintiff pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as the Court may direct, and that upon such payment into Court being made, the property claimed be given up to him. C.R. 1099.

xii. *Security for Costs.*

373. Security for costs may be ordered,

- (a) Where the plaintiff resides out of Ontario;
- (b) Where the plaintiff is ordinarily resident out of Ontario, though he may be temporarily resident within Ontario;
- (c) Where the plaintiff has brought another action or proceeding for the same cause which is pending in Ontario or in any other country;

- (d) Where the plaintiff or any person through or under whom he claims, has had judgment or order passed against him, in another action or proceeding for the same cause in Ontario or in any other country, with costs, and such costs have not been paid;
- (e) Where the plaintiff sues as an informer, or seeks to recover any penalty given to an informer or person who sues for the same under a statute or law by which a penalty is given to any person who sues for the same, either for his sole benefit, for the benefit of the Crown, or partly for his benefit and partly for the benefit of the Crown, and the defendant swears that in his belief the plaintiff or informer is not possessed of property sufficient to answer the costs of the action in case a judgment is rendered in favour of the defendant, and that he (the applicant) has a good defence to the action upon the merits, as he is advised and believes;
- (f) Where the action is brought by a nominal plaintiff;
- (g) Where upon the examination of the plaintiff it appears that there is good reason to believe that the action is frivolous and vexatious, and that the plaintiff is not possessed of sufficient property in Ontario to answer the costs of the action;
- (h) Where an action is brought on behalf of a class and the plaintiff is not possessed of sufficient property to answer the costs of the action, and it appears that the plaintiff is put forward or instigated to sue by others;
- (i) Where under the provision of any statute the defendant is entitled to security for costs;
- (j) Where either party to a garnishee, interpleader or other issue is an active claimant, and would if a plaintiff be liable to give security for costs. C.R. 1198. *Amended.*

374.—(1) The order shall require the plaintiff, within four weeks from service to give security in \$400 for the defendant's costs of the action, and shall direct that all further proceedings be stayed in the meantime, and that in default of such security being given the action shall, as against the defendant obtaining the order, be dismissed with costs.

(2) In actions in the County Court the amount of the security shall be \$200. C.R. 1198 (2, 3). *New.*

375 Where it appears by the writ of summons, or by an indorsement thereon, that the plaintiff resides out of Ontario, the order may be obtained on *præcipe*. C.R. 1199.

376. Upon default in giving security the action may upon an *ex parte* application be dismissed with costs. C.R. 1203.

377. Where security for costs is ordered, proceedings in the action shall be stayed, from the service of the order until the security is given, and, if given by bond, until the bond is allowed. C.R. 1204.

378. The day on which an order that a party do give security for costs is served, and the time until and including the day on which the security is allowed, shall not be reckoned in the computation of time allowed for taking any proceeding in the action. C.R. 346.

379. A bond given as security for costs shall be to the party requiring the security, and shall be by two sufficient sureties. C.R. 1205.

380. Upon the bond being filed, with affidavits of execution and justification, either party may apply to allow or disallow the same within seven days after notice of filing it is served, otherwise the bond shall stand allowed. C.R. 1206. *Amended.*

381.—(1) Instead of giving a bond as security for costs, a party may, without special order, pay into Court, as such security, a sum of money not less than half the penalty of the bond required.

(2) The party paying in the money shall, when paying the same in, state the purpose for which it is paid in, and shall forthwith serve a notice upon the opposite party specifying the fact and purpose of such payment. C.R. 1207.

382. The amount of security, whether directed to be given by an order issued on *præcipe* or otherwise, may be increased or diminished from time to time. C.R. 1208.

383.—(1) A defendant must appear before obtaining an order for security of costs. *New.*

(2) Where the writ of summons is specially endorsed the defendant shall also file the affidavit required by Rule 56, and if an order for security for costs is issued the plaintiff may pay into Court the sum of \$50, as a partial compliance with such order, and thereupon he shall be at liberty to cross-examine and move for judgment; but the order for security shall, in all other respects, have its full operation and effect.

(3) Such payment into Court shall not prejudice any motion that may be made to set aside the order for security.

(4) In actions in the County Court the amount of the partial security shall be \$25.

(5) Where upon motion under Rule 57 the plaintiff is awarded judgment for a portion only of his claim, he may issue the judgment and execution thereunder, but so long as the order for security stands he shall not take any other proceedings in respect to the residue of his claim, until it has been fully complied with. C.R. 1209.

384. A bond given for security for costs may be delivered up for cancellation or suit upon consent of the solicitors in the cause without order. C.R. 1210.

385. Where money has been paid into Court as security for costs or with a defence it may be paid out on the consent of the solicitors in the cause or matter, without order, and may be paid to the solicitors upon production of the consent of the client verified by affidavit. C.R. 1211. *Amended.*

xiii. *Interim Alimony.*

386.—(1) In an alimony action, the defendant may, at any time before the statement of defence is due, give notice in writing that he submits to pay the interim alimony, and costs, as demanded by the plaintiff in the indorsement on the writ; and in that case no motion for interim alimony shall be made until there has been a default in payment; and in case of default, affidavits being filed verifying the indorsement and notice and the default, an order for payment of the sum demanded shall be issued on *præcipe*.

(2) The defendant may give notice in writing that he submits to pay such less sum as he may deem proper and may name in his notice.

(3) Where a notice has been so served and the plaintiff accepts the amount therein mentioned as sufficient, the defendant shall pay thereafter the sum so offered as interim

alimony, and no order for interim alimony shall be made until there has been default in payment.

(4) Where a notice has been so served, the plaintiff's interim disbursements may be taxed without order.

(5) Where the plaintiff does not accept the amount offered and upon motion for interim alimony it is found that the sum so offered is reasonable, and the defendant pays to the plaintiff the sum so offered, no order for interim alimony shall be made until there has been default in payment. C.R. 370.

387. An application for interim alimony or for interim disbursements shall not be made until the time for delivering the defence has expired, and costs shall not be ordered to be paid *de die in diem* by the defendant, but only the amount of the cash disbursements actually and properly made by the plaintiff's solicitor. C.R. 1144.

388. Where the plaintiff in an alimony action fails to obtain a judgment for alimony, no costs beyond the amount of the cash disbursements actually and properly made by the plaintiff's solicitor, shall be ordered to be paid by the defendant. C.R. 1145.

xiv. Change of Solicitor.

389. A party suing or defending by a solicitor may change his solicitor by filing and serving a notice to that effect. C.R. 335, *amended*.

390. A party suing or defending in person and desiring to be represented by a solicitor may file and serve a notice to that effect. C.R. 336, *amended*.

391. A party represented by a solicitor and desiring to sue or defend in person may file and serve a notice to that effect. *New*.

392. When the solicitor on the record dies and no notice changing the solicitor has been filed and served, service may be effected by mailing the document to be served to the party at his address given in the writ or appearance (as the case may be) by registered letter, endorsed with a memorandum: "This document is served by mail as your solicitor is dead and no new solicitor has been appointed in his place." *New*.

xv. Compounding Penal Actions.

393. Leave to compound a penal action may be given, but in cases where part of the penalty goes to the Crown notice shall first be given to the Attorney-General for Canada or the Attorney-General for Ontario as the case may be. C.R. 436. *Amended*.

394. The order for compounding shall not be made unless the defendant undertakes to pay the sum for which the

Court has given him leave to compound such action. C.R. 437.

395. Where leave is given to compound the proportion of the Crown shall, unless otherwise ordered, be paid into Court for the use of His Majesty. C.R. 438.

xvi. *Transmission of Papers.*

396.—(1) Every local officer shall upon *præcipe* and payment of the necessary postage or express charges for transmission and return, transmit to the Central Office Toronto, all papers and documents required for use in Toronto. C.R. 337.

(2) Where documents filed with an officer of the Court, are required by or for use before any other officer, the officer with whom the documents are filed, shall upon the production of a request signed by the officer requiring them transmit them upon payment of the postage or express charges required for their transmission and return. C.R. 338.

xvii. *Confession of Action or Judgment.*

397. No *cognovit actionem* or warrant of attorney to confess judgment given after these Rules come into force shall be of any validity. The practice with respect to any warrant of attorney or *cognovit actionem* given before these Rules come into force shall be as laid down in Rules 597 to 602 of 1897. *New.*

xviii. *Striking Out Jury Notices.*

398.—(1). When an application is made to a Judge in Chambers for an order striking out a jury notice, and it appears to him that the action is one which ought to be tried without a jury, he shall direct that the issues shall be tried and the damages assessed without a jury, and in case the action has been entered for trial shall direct the action to be transferred to the non-jury list.

(2) The refusal of such an order by the Judge in Chambers shall not interfere with the right of the Judge presiding at the trial to try the action without a jury. Nor shall an order made in Chambers striking out a jury notice interfere with the right of the judge presiding at the trial to direct a trial by jury.

(3) The Judge presiding at a jury sittings in Toronto, may in his discretion strike out the jury notice and transfer the action for trial to a non-jury sittings, and this power may be exercised notwithstanding that the case is not on the peremptory list for trial before the said Judge. C.R. 1322.

CHAPTER XV.

REFERENCES.

i. *Referees.*

399. In the event of the Referee declining to act, or dying before he has made his report, a Judge may appoint a new Referee. C.R. 648. *Amended.*

400. The practice and procedure on a reference to a Referee, shall be the same, as nearly as may be, as the practice and procedure in the Master's office. C.R. 650.

401. The Court may require explanations or reasons from a Master or Referee, and may remit the cause or matter, or any part thereof, for further consideration, to the same or any other Master or Referee. C.R. 652. *Amended.*

ii. *Proceedings on References.*

402. Every order of reference shall be brought into the Master's office within ten days after it is issued, by the party having the carriage of the same and in default any other party having an interest in the reference, may assume the carriage of the order. C.R. 657.

403. Unless otherwise directed by the Master, notice of the first proceeding before him shall be given to every party affected by or interested in the inquiry though any such party may not have appeared or pleaded in the action. C.R. 658.

404. Where in proceedings before the Master, it appears to him that a person not already a party ought to be made a party, and ought to be at liberty to attend the proceedings before him, he may direct an office copy of the order, indorsed with a notice (Form 41), to be served upon such person, who thereupon shall be treated and named as a party to the action and shall be bound as if he had been originally made a party. C.R. 659 and 660.

405. A person so served may apply to the Court at any time within ten days from the date of such service, to discharge, add to, vary, or set aside the order of reference or the order adding him as a party. C.R. 661.

406. Where, at any time during the reference, it appears to the Master that the interests of the parties can be classified, he may require the parties constituting each or any

class to be represented by the same solicitor; and where the parties constituting such class cannot agree upon the solicitor to represent them, the Master may nominate him. C.R. 662.

407. Where a party prosecuting a reference, does not proceed with due diligence, the Master may, upon the application of any other person interested commit to him the prosecution of the reference. C.R. 663.

408. A reference shall be proceeded with as far as possible *de die in diem* and when an adjournment is ordered, the Master shall note in his book the reason thereof and shall when practicable fix the time when it is to be resumed so as to avoid the service of a new appointment. C.R. 664.

409. The Master shall (unless he dispenses with it) in the first instance issue an appointment to consider. Upon the return of the appointment he shall fix a time at which to proceed with the reference and shall give any special directions he thinks fit, as to:—

- (a) The parties who are to attend on the several accounts and inquiries;
- (b) The time when each proceeding is to be taken;
- (c) The mode in which any accounts referred to him are to be taken or vouched;
- (d) The evidence to be adduced in support thereof;
- (e) The manner in which each of the accounts and inquiries is to be prosecuted;

Any such directions may be afterwards varied or added to, as may be found necessary. C.R. 665.

410. Under an order of reference, the Master shall have power:—

- (a) To take the accounts with rests or otherwise;
- (b) To take account of money, rents and profits received or which, but for wilful neglect or default, might have been received.
- (c) To set occupation rent;
- (d) To take into account necessary repairs, and lasting improvements, and costs and other expenses properly incurred otherwise, or claimed to be so;

- (e) To make all just allowances;
- (f) To report special circumstances;
- (g) And generally, in taking the accounts, to inquire, adjudge, and report as to all matters relating thereto, as fully as if the same had been specifically referred. C.R. 667.

411. The Master may cause parties to be examined, and to produce books, papers and writings, as he thinks fit, and may determine what books, papers and writings are to be produced, and when and how long they are to be left in his office; or in case he does not deem it necessary that such books and papers or writings should be left or deposited in his office, he may give directions for the inspection thereof by the parties requiring the same, at such time and in such manner as he deems expedient. C.R. 669.

412. The Master may cause advertisements for creditors or for heirs or next of kin, or other unascertained persons, and the representatives of such as are dead, to be published as the circumstances of the case require; and in such advertisements he shall appoint a time within which such persons are to come in and prove their claims, and unless they so come in, they are to be excluded from the benefit of the order. A claim may nevertheless be received by the Master at any later time. C.R. 670.

413. The Master shall consider the claims brought in before him pursuant to such advertisement, upon a day to be fixed by him when settling the advertisement, and if any claim is to be contested shall cause notice of contestation to be served upon the claimant fixing a day when he will adjudicate upon the claim. C.R. 671. *Amended.*

414. The executor or administrator, or such other person as the Master directs, shall examine the claims sent in pursuant to the advertisement, and ascertain, as far as he is able, which of such claims is just and proper. C.R. 707.

415. The executor or administrator, or one of the executors or administrators, or such other person as the Master directs, shall on or before the day appointed to consider the claims, file an affidavit, verifying a list of the claims sent in pursuant to the advertisement, and stating which of such claims are just and proper to be allowed, and the reasons for such belief. C.R. 708. *Amended.*

416. Under every order whereby the delivery of deeds or execution of conveyances is directed or becomes necessary, the Master shall give directions as to delivery of such deeds, settle conveyances where the parties differ, and give directions as to the parties to the conveyances and as to the execution thereof. C.R. 672.

417. Where an account is to be taken, the accounting party, unless the Master otherwise directs, shall bring in the same in debit and credit form, verified by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit, and shall not be annexed thereto. C.R. 673.

418. The Master may direct that in taking accounts, the books of account, in which the accounts required to be taken have been kept, or any of them, be taken as *prima facie* evidence of the truth of the matters therein contained. C.R. 674.

419. Before proceeding to the hearing and determining of a reference, the Master may appoint a day for the purpose of entering into the accounts and inquiries, and may direct the production and inspection of vouchers, and if deemed proper the cross-examination of the accounting party on his affidavit, with a view to ascertaining what is admitted and what is contested between the parties. C.R. 678.

420. A party seeking to charge an accounting party beyond what he has in his account admitted to have received, shall give notice thereof to the accounting party, stating as far as he is able the amount sought to be charged and the particulars thereof in a short and succinct manner. The Master may direct any party who seeks to falsify an account to deliver particulars of the item objected to. The particulars shall refer to the item by number. C.R. 680. *Amended.*

421. The Master shall keep in his office a book in which he shall enter proceedings taken before him, and the directions which he gives in relation to the prosecution of the reference, or otherwise, and it shall not be necessary to issue or serve any formal order or document embodying such directions to bind the parties attending the reference. C.R. 681. *Amended.*

422. In giving directions, and in regulating the manner of proceeding before him, the Master shall devise and adopt the simplest, most speedy, and least expensive method of

prosecuting the reference, and with that view, may dispense with any proceeding ordinarily taken, which he conceives to be unnecessary, or substitute a different course of proceeding for that ordinarily taken. C.R. 683.

423. Where the Master directs parties not in attendance before him to be notified to attend at some future day, or for different purposes at different future days, it shall not be necessary to issue separate appointments, but the parties shall be notified by one appointment, signed by the Master, of the proceedings to be taken, and of the times by him appointed for the taking of the same. C.R. 684.

424. As soon as the hearing of any matter pending before the Master is completed, he shall so inform the parties to the reference then in attendance, and make a note to that effect in his book; and after such entry no further evidence shall be received, or proceedings had, without the special permission of the Master; and the Master shall then fix a day to settle his report and shall cause notice of such day to be given to all parties interested not then in attendance, unless for special reason such notice is dispensed with. C.R. 687.
Amended.

425. In the report no part of any account, affidavit, deposition, examination or pleading used in the Master's office, shall be stated or recited, but the same may be referred to by date or otherwise. C.R. 689.

426. Reports affecting money in Court, or to be paid into Court, shall set forth, in figures, in a schedule, a brief summary of the sums found by the report, and paid or payable into or out of Court, and the funds or shares to which the sums of money are respectively chargeable. C.R. 690.

427. As soon as the Master's report is settled and signed it shall be delivered out to the party prosecuting the reference, or in case he declines to take the same, then, in the discretion of the Master, to any other party applying therefor. C.R. 691.

428. Pending a reference to a Master all affidavits, papers and documents relating thereto required to be filed shall be filed with the Master, but every report or certificate of a Master shall be filed in the office in which the proceedings were commenced and upon the completion of the reference the papers shall be transferred to the office in which the proceedings were commenced. C.R. 693 and 700.

429. Any party affected by a report may file the same, or a duplicate thereof. He shall forthwith serve notice of filing. C.R. 694.

430.—(1) Where the Master is directed to appoint money to be paid at some time and place, he shall appoint the same to be paid into some Bank to the joint credit of the party to whom the same is made payable, and the Accountant. The party to whom the same is made payable may name the Bank into which he desires the same to be paid.

(2) Where money is paid into a Bank, in pursuance of such appointment, the party paying may pay the same either to the credit of the party to whom the same is made payable, or to the joint credit of the party and the Accountant; and if the same be paid to the sole credit of the party, such party shall be entitled to receive the same without order.

(3) When money is paid to the joint credit of the Accountant and the party entitled, the Accountant shall sign the cheque for payment out upon the production of the consent of the party paying in, duly verified, or of his solicitor, or in the absence of such consent upon the order of a Judge. C.R. 695.

431. Where, by a report, any money in Court is found to belong to infants, the Master shall require proper evidence of the age of the infants to be given before him and shall in his report state the date of birth and age at the time of his report of each of such infants or shall certify specially his reason for not so doing. C.R. 696.

432. In administration suits, reports shall, as far as possible, be according to Form 51. C.R. 697.

433.—(1) The Master shall have the same power, authority, and jurisdiction, as the Master in Chambers, in respect to all matters referred to him, or which may arise in his office.

(2) Where he acts as under this Rule the fees (payable in stamps) shall, in respect of such business, be the same as are payable for the like business to the Master in Chambers. C.R. 698.

434. Any Official Referee, upon the request of the Master in Ordinary, or of a Judge, may sit for the Master in Ordinary, and while sitting for him shall have all the authority and power of such Master, but shall not be entitled to any fees to his own use. C.R. 699.

435. In taking accounts in administration proceedings interest shall be computed on the deceased's debts from the date of the judgment or order, and on legacies from the end of one year after the deceased's death, unless any other time of payment is directed by the will. C.R. 703.

436. Where an order is made for payment of money out of Court to creditors, the person whose duty it is to prosecute the order shall send each creditor, or his solicitor (if any), a notice that the cheques may be obtained from the Accountant; and shall deposit with the accountant any papers necessary to enable the creditors to receive their cheques. C.R. 714.

437. Every notice required to be given to a creditor or claimant shall unless the Master otherwise directs be transmitted by registered letter to the creditor or claimant at the address given in the claim sent in, or, in case the creditor or claimant has employed a solicitor, to such solicitor at the address given by him. C.R. 715.

438. Where a sale is ordered, the Master may cause the property to be sold either by public auction, private contract, or tender, or part by one mode and part by another, as he may think best for the interest of all parties. C.R. 716.

439. The party having the conduct of the sale shall bring into the Master's office a draft advertisement, which shall shew:—

- (a) The short style of cause;
- (b) That the sale is in pursuance of an order of the Court;
- (c) The time and place of sale;
- (d) A short and true description of the property to be sold;
- (e) The manner in which the property is to be sold, whether in one lot or several, and if in several, in how many, and what lots;
- (f) What proportion of the purchase money is to be paid down by way of deposit, and at what time or times, and whether the residue of such purchase money is to be paid with or without interest;

- (g) If there is an upset price or reserve bid it shall be so stated.
- (h) Any particulars in which the proposed conditions of sale differ from the standing conditions. C.R. 720 and 721.

440. Upon the return of the appointment to settle the advertisement the Master shall also fix the time and place of sale, name an auctioneer, where one is to be employed, give direction for publication, fix the upset price or reserve bid, and make every other necessary arrangement preparatory to the sale. C.R. 722.

441. The standing conditions of sale shall be those set forth in Form No. 52. C.R. 723.

442. All parties may bid, except the party having the conduct of the sale, and except any trustees, agents, and other persons in a fiduciary position. C.R. 725.

443. The Master or his Clerk shall conduct the sale where no auctioneer is employed. C.R. 727.

444. The purchaser shall at the time of sale sign an agreement to purchase. C.R. 728.

445. The deposit shall be paid to the vendor, or his solicitor, at the time of sale, and shall forthwith be paid by him into Court, in the name of the purchaser. C.R. 729.

446. After the sale is concluded, the auctioneer, where one is employed, shall make an affidavit as to the result of the sale and where no auctioneer is employed, the Master or his Clerk shall certify the result. C.R. 730.

447. Objection to the sale shall be by motion to set aside the same; and notice of the motion shall be served upon the purchaser, and on the other parties and biddings shall be opened only on special grounds. G.R. 732.

448. The purchaser may pay his purchase money, or the balance thereof, into Court without further order; and after confirmation of the report on sale, upon notice to the party having the conduct of the sale, he may if he so desires obtain a vesting order; and when he is entitled to be let into possession, if possession is wrongfully withheld from him, an order against any party in possession for the delivery thereof to him may be made upon his application or upon the application of the vendor. C.R. 733, *amended*.

449. The vendor shall, forthwith upon demand, deliver an abstract of title to the purchaser; and if the purchaser does not serve objections within 7 days, he shall be deemed to have accepted the abstract as sufficient, but if objections are served, the vendor shall answer them within 14 days; and if the purchaser is still dissatisfied, and the parties cannot agree, either party may obtain from the Master an appointment to consider the abstract. C.R. 735.

450. The Master shall determine all questions upon the abstract and the sufficiency thereof; and, if desired by the purchaser, may require the vendor to make the same as perfect as he can, and if the vendor neglects or refuses to do so, may permit the purchaser to supply defects therein, at the vendor's expense. C.R. 736.

451. The Master shall not make a report on the abstract, but shall mark the objections as allowed or disallowed, and when he finds the abstract perfect, or as perfect as the vendor can make it, he shall certify to that effect thereon; and such certificate shall be final without filing, unless appealed from in the same manner as from a Master's report. C.R. 737.

452. After acceptance or confirmation of the abstract, the verification shall be proceeded with, and the vendor shall with all diligence afford the purchaser all the means of verification in his power, in the manner and according to the practice usual with conveyancers; and after having done so, he may serve a notice on the purchaser to make objections or requisitions, if any, within 7 days, or that otherwise he will be deemed to have accepted the title. C.R. 739.

453. Upon being served with such notice, the purchaser, if dissatisfied, shall serve his objections or requisitions within the time thereby limited; and the like course shall be followed upon such objections or requisitions as is prescribed in relation to the abstract. C.R. 740.

454. In case of the refusal or neglect of the vendor to verify the abstract to the best of his ability, or to furnish any necessary proof or documents in his power, the Master may authorize the purchaser to do so at the vendor's expense. C.R. 741.

455. The foregoing six Rules shall apply to all cases of reference to the Master as to title, as well as to sales by the Court. C.R. 742.

456. Purchase money shall not be paid out of Court except upon consent of the purchaser or his solicitor, or upon proof being made to the Accountant that the purchaser has received a conveyance or vesting order in respect of the property for which the money in question was paid into Court. C.R. 743.

457. No conveyance shall be settled until evidence is produced of the purchase money having been paid into Court, and, where a mortgage is taken for part of the purchase money, until evidence is given to the said officer of such mortgage having been registered and deposited with the Accountant. C.R. 970.

458. Where a Master is to appoint a Committee, guardian or receiver, the name proposed and the names of his proposed sureties shall be given in the appointment and the Master shall appoint the committee, guardian or receiver, and settle and approve of the proposed security, and when the security has been duly filed, shall sign a written appointment. C.R. 762 and 763.

459. The Master shall appoint a time when the person appointed is to pass his accounts and pay his balances into Court; and in default of compliance with such direction, the person appointed may, on the passing of his accounts, be disallowed any salary or compensation for his services, and may be charged with interest upon his balances. C.R. 766.

CHAPTER XVI.

MORTGAGE ACTIONS.

460. A mortgagee may in an action claim foreclosure of the equity of redemption or a sale of the mortgaged premises, and payment of the mortgage debt by any party personally liable therefor and possession of the mortgage premises. The writ shall be indorsed in accordance with the Form applicable thereto. C.R. 378 and 141.

461. Where a defendant by writ in an action for foreclosure desires a sale, but does not otherwise desire to defend the action, he shall, within the time allowed for appearance, file and serve a memorandum, entitled in the action, to the following effect: "I desire a sale of the mortgaged premises instead of foreclosure," and shall pay into Court the sum of \$80 to meet the expenses of the sale, and thereupon the judgment shall be entered for sale. C.R. 381.

462. A person made a party in the Master's office and desiring a sale shall make a similar deposit before the Master's report is settled, and obtain an order which may be issued on *præcipe* directing sale instead of foreclosure, and thereupon all subsequent proceedings shall be had and taken as if the judgment had been in the first instance for sale. C.R. 382.

463. Where there are infant defendants the official guardian may require the judgment to be for sale without making any deposit. *New.*

464.—(1) If the plaintiff prefers that the sale be conducted by any adult defendant desiring the sale, he may so elect; and he shall thereupon notify the defendant of such election and the defendant making the deposit shall be entitled to a return thereof. C.R. 383 and 384.

(2) In other cases the Master shall deal with the deposit in making his report. *New.*

465. The Court may on special application either before or after judgment direct a sale instead of a foreclosure; and without previously determining the priorities of incumbrancers, or giving the usual or any time to redeem. C.R. 379.

466. In a mortgage action where the defendants, or some of the defendants, are infants and default is made by the adult defendants and the official guardian does not desire to set up any defence, the plaintiff, upon filing affidavits showing such facts and circumstances as entitle him to judgment, may move for judgment in Chambers, upon notice to the official guardian. C.R. 595, *amended.*

467.—(1) Where the writ has been duly indorsed, and the defendant fails to appear, or by his statement of defence admits the execution of the mortgage and other facts entitling the plaintiff to a judgment, or where the defendant disclaims any interest in the mortgaged premises, or where no statement of defence is delivered, or where the defendant disputes the amount of the plaintiff's claim only, the plaintiff may sign judgment.

(2) Where the defendant has disputed the amount of the plaintiff's claim, he shall be entitled to four days' notice of the taking of the account. Where no reference as to incumbrances is desired, such account may be taken by the officer signing judgment; whose finding shall be subject to appeal to a Judge in Chambers in the manner prescribed for appeals from the Master in Chambers.

(3) Where the writ has not been personally served, the claim of the plaintiff shall be duly verified by an affidavit which shall be filed with the officer taking the account. C.R. 596, *amended*.

468. Upon a reference under a judgment for foreclosure or sale or redemption of mortgaged property, the Master shall inquire and state whether any person, and who, other than the plaintiff, has any lien, charge, or incumbrance upon the land and premises embraced in the mortgage security of the plaintiff, subsequent thereto. C.R. 744.

469. The plaintiff shall bring into the Master's Office certificates of the Registrar and Sheriff of the County where in the property lies, setting forth all the incumbrances which affect the property and such other evidence as may be necessary. C.R. 745.

470. The Master shall direct all such persons as appear to have any lien, charge or incumbrance upon the property in question, subsequent to the mortgage in question, to be made parties to the action, and to be served with a notice (Form No. 43). C.R. 746.

471. Any party served with such notice may apply at any time within 10 days from the date of the service, to discharge, add to, vary, or set aside the judgment, or the order making him a party. C.R. 747.

472. The Master before he proceeds to hear and determine shall require an appointment (Form No. 44) to be served upon all persons made parties before the judgment appearing to have any lien, charge or incumbrance upon the lands in question, subject to the plaintiff's mortgage, and shall in the notice to the defendant by writ, required by Rule 403, state the names and nature of the claims of those so notified, and of those added under the provisions of Rule 470 as appearing to have a lien, charge or incumbrance upon the said lands, and such notice may be in the Form 45. C.R. 748 and 1306.

473. Where a person who has been duly served with a notice under Rule 470 or with an appointment under Rule 472 neglects to attend at the time appointed, the Master shall treat such non-attendance as a disclaimer by the person so making default; and any claim of such person shall be thereby foreclosed, unless otherwise ordered upon application duly made for that purpose. C.R. 749.

474. When all parties have been duly served, the Master shall take an account of what is due to the plaintiff, and to the other incumbrancers (if any), for principal money and interest, and tax their costs, and settle their priorities, and appoint a time and place, or times and places, for payment according to the practice of the Court. C.R. 750.

475. On any proceeding for foreclosure by, or for redemption against an assignee of a mortgagee, the statement of the mortgage account, under the oath of such assignee, shall be sufficient *prima facie* evidence of the state of such account, and an affidavit or oath shall not be required from the mortgagee or any intermediate assignee denying any payment to such mortgagee or intermediate assignee, unless the mortgagor or his assignee, or the party proceeding to redeem, denies by oath or affidavit the correctness of such statement of account. C.R. 751.

476. The Master's report shall state the names of all persons who have been made parties in his office, and who have been served with the notice or appointment hereinbefore provided for, and the names of such as have made default, and shall set forth the amount of the claims, and priorities of such as have attended, and these latter shall be certified as the only incumbrancers upon the property. C.R. 752.

477. Subsequent accounts shall, from time to time, be taken, subsequent costs taxed, and necessary proceedings had, for redemption by, or foreclosure of, the other parties, entitled to redeem the mortgaged premises, as if specific tions for all these purposes had been contained in the judgment. C.R. 753.

478. If the judgment directs a sale on default in payment, then on default being made, and an order for sale obtained, the property shall be sold, with the approbation of the Master, and the purchaser shall pay his purchase money into Court, to the credit of the action. C.R. 754.

479. The purchase money, when so paid, shall be applied and paid out of Court in payment of what has been found due to the plaintiff and the other incumbrancers (if any), according to their priorities, together with subsequent interest, and subsequent costs. C.R. 755.

480. Upon a reference under a judgment for redemption, the Master shall, without any special direction, take an account of what is due to the defendant for principal money and interest, and his costs shall be taxed, and a time and place for payment appointed. C.R. 756.

481. Where the judgment is for redemption or foreclosure, or redemption or sale, such proceedings are in such case to be thereupon had, and with the same effect as in an action for foreclosure or sale, and in such case the last incumbrancer shall be treated as the owner of the equity of redemption. C.R. 757.

482. Subject to the provisions of *The Mortgages Act*, upon payment of the amount found due, the mortgagee shall, unless the judgment otherwise directs, assign and convey the mortgaged property to the party making the payment, or to whom he may appoint, free and clear of all incumbrances done by him, and shall deliver up all deeds and writings in his custody or power relating thereto. C.R. 758.

483. If the purchase money is not sufficient to pay what has been found due to the mortgagee (where the mortgagor or person liable to pay the debt is a defendant), he shall be entitled on an *ex parte* application, to an order for the payment of the deficiency. C.R. 386.

484.—(1) Where the state of the account ascertained by a judgment order or report is changed before the final order is obtained, the mortgagee may either before or after the day appointed for payment apply *ex parte* to fix, by reference to a Master or otherwise, the amount to be paid in lieu of the amount previously ascertained or where the day appointed for payment has not arrived may give notice to the party by whom the money is payable that he gives him credit for a sum certain, to be named in the notice, and that he claims that there remains due in respect of such mortgage money a sum certain, to be also named in the notice.

(2) Where the application is made after the day appointed for payment, and in other cases if so directed, a new day for payment shall be appointed.

(3) Where notice of credit has been given, if the sums named therein appear proper to be allowed and paid, the final order may be granted without further notice; but the party to whom the notice of credit is given may apply to fix, by reference to a Master or otherwise, the amounts proper to be allowed and paid instead of the amounts mentioned in the notice. C.R. 387.

485.—(1) In an action for foreclosure or sale, or for recovery of possession of any mortgaged property for default in the payment of interest, or of an instalment of the principal, the defendant may, before judgment or after judg-

ment, but before sale or final foreclosure or recovery of possession of the mortgaged property, move to stay the action upon payment of the amount then due for principal, interest and costs. C.R. 388.

(2) Any action so stayed may upon subsequent default in the payment of a further instalment of the principal, or of the interest, be proceeded with by leave of the court. C.R. 389 and 390.

486. In default of payment according to the report in a foreclosure action, a final order of foreclosure may be granted against the party making default, on an *ex parte* application. C.R. 385.

487. In a redemption action, on default of payment being made according to the report, the defendant shall be entitled, on an *ex parte* application, to a final order of foreclosure against the plaintiff, or to an order dismissing the action with costs to be paid by the plaintiff. C.R. 391.

488. In a redemption action where the plaintiff is declared foreclosed, directions may be given either by the final order foreclosing the plaintiff, or by subsequent orders, that all necessary inquiries be made, accounts taken and proceedings had for redemption or foreclosure, or redemption or sale, as against any subsequent incumbancers, or for the adjustment of the relative rights and liabilities of the original defendants as among themselves. C.R. 392.

489. In mortgage actions the period allowed for redemption in the first place shall be six months and when it becomes necessary to fix a date for redemption after the lapse of the first period the further time allowed shall be one month. C.R. 393.

490.—(1) Where one or more of the persons interested in the equity of redemption are already defendants, and it is made to appear that by reason of their number or otherwise, it is expedient to permit the action to proceed without the presence of the other persons interested in the equity of redemption, the Court may give directions accordingly, and may order such other persons to be made parties in the Master's office after judgment.

(2) Where after judgment it appears that persons are interested in the equity of redemption besides those who are already parties, such persons may be made parties in the Master's office upon such terms as may seem just. C.R. 190.

CHAPTER XVII.—APPEALS AND NEW TRIALS.

i.—APPEALS TO DIVISIONAL COURTS.

491.—(1) An appeal from a judgment pronounced at the trial, or an application for a new trial, shall be by notice of motion, which shall be set down to be heard at the latest at the first sittings of a Divisional Court which commence after the expiration of one month from the date of judgment.

(2) The motion shall be upon seven days' notice, and shall be set down two clear days before the commencement of the sittings. C.R. 787.

492.—(1) An appeal from any judgment or order other than a judgment pronounced at the trial shall be by notice of motion which shall be set down to be heard at the latest at the first sittings of a Divisional Court for which due notice can be served after the expiration of ten days from the date of judgment or order.

(2) The motion shall be upon a two clear days' notice, and shall be set down two clear days before the first day of the sittings. C.R. 788.

493. Every notice of motion by way of appeal shall set out the grounds of the motion or appeal. C.R. 789.

494.—(1) The appellant shall when setting the appeal down deliver to the Registrar of the Appellate Division all papers necessary for the proper hearing of the appeal, including a copy of the judgment or order in question (or the settled minutes thereof) and, where evidence is to be used, five copies of the evidence, certified as correct by the official stenographer.

(2) If the copies of evidence have not then been prepared, it shall be sufficient if such copies have been duly bespoken and are deposited so soon as received from the stenographer. C.R. 791, 792.

ii. STAY OF EXECUTION PENDING APPEAL.

495. The Judge at the trial may stay the entry of judgment or the issue of execution for a period not exceeding thirty days. *New.*

496. Unless otherwise ordered by a Judge of a Divisional Court the execution of the judgment appealed from shall, upon an appeal being set down to be heard, be stayed, pending the appeal, but if the judgment appealed

from awards a mandamus or an injunction, execution shall not be stayed unless so ordered by the Judge appealed from or by a Judge of a Divisional Court. C.R. 827.

497. Where an execution has been issued and is thereafter stayed upon an appeal, the appellant shall be entitled to obtain a certificate from the Registrar of the Appellate Division that the execution has been stayed pending the appeal, and upon the certificate being lodged with the sheriff the execution shall be superseded, but the execution debtor shall pay the sheriff's fees; and the sum so paid shall be allowed to him as part of the costs of the appeal. C.R. 828. *Amended.*

498. Where the execution of a judgment is stayed pending an appeal, all further proceedings in the action, other than the issue of the judgment, and the taxation of costs thereunder, shall be stayed, unless otherwise ordered by a Judge of the Divisional Courts. C.R. 829.

III.—DEFAULT AND DISAGREEMENT OF JURY.

499. Where a party does not appear at the trial, the judgment may be set aside and a new trial ordered by the Judge presiding at the sittings, or by a Judge. C.R. 778. *Amended.*

500. Where the Jury disagree the action may be re-tried at the same sittings or at any subsequent sittings as may be directed. *New.*

501.—(1) Where a jury is directed to answer questions, and answers some but not all, or where the answers are conflicting so that judgment cannot be entered upon such findings, the action shall be re-tried as in the case of a disagreement.

(2) If the answers entitle either party to judgment as to some but not to all the causes of action, the judge may direct judgment to be entered on the causes of action as to which the answers are sufficient, and the issues upon the remaining causes of action shall then be re-tried as upon a disagreement. C.R. 781.

IV.—APPEALS FROM MASTERS AND REFEREES—LOCAL JUDGES AND OFFICERS IN CHAMBERS.

502. Every report or certificate of a Master shall be filed and shall be deemed to be confirmed at the expiration of fourteen days from the date of service of notice of filing the same, unless notice of appeal is served within that time, same, unless notice of appeal is served within that time. C.R. 769.

503. An appeal from the report or certificate of a Master or Referee shall be to the Court upon seven clear days' notice, and shall be returnable within one month from the date of service of notice of filing of the report or certificate. C. R. 770.

504. An appeal shall lie under the two preceding rules from every decision of a Master, except an order made under the authority of Rule 433. C. R. 1264.

505.—(1) A person affected by an order of the Master in Chambers, a Local Judge or a Local Master, or other officer in Chambers, or of a Master under the authority of Rule 433, may appeal therefrom to a Judge in Chambers.

(2) The appeal shall be by motion, on notice served within four days and returnable within ten days after the decision complained of.

(3) The appeal shall not be a stay of proceedings unless ordered by a Judge or by the officer whose decision is complained of.

(4) Where the judgment order or decision is made or given in vacation, a person affected thereby may, if the matter is urgent, appeal therefrom during vacation to the Vacation Judge, or may appeal after vacation in the same manner and within the same time as if the judgment order or decision had been made on the first day after vacation.

(5) Appeals in Chambers shall be argued by Counsel. C.R. 767 and 768.

506. Any person affected by a judgment or order of a Local Judge in Court, may appeal therefrom to a Judge in Court, and such appeal shall be brought within the time and upon the like notice and proceedings as in cases of appeals from orders and decisions of Local Judges in Chambers. C.R. 48.

V.—APPEALS FROM A JUDGE IN CHAMBERS.

507.—(1) A person affected by an order or judgment pronounced by a Judge in Chambers which finally disposes of the whole or part of the action or matter may appeal therefrom to a Divisional Court without leave.

(2) Except in cases in which a right of appeal is specially conferred no appeal shall lie from any judgment or order of a Judge in Chambers which does not finally dispose of the

whole or part of the action or matter, unless by leave of a Judge other than the Judge by whom the judgment order was pronounced.

(3) Such leave shall not be given unless:—

(a) There are conflicting decisions by Judges upon the matter involved in the proposed appeal, and it is in the opinion of the Judge desirable that an appeal should be allowed; or

(b) There appears to the Judge to be good reason to doubt the correctness of the judgment or order from which the applicant seeks leave to appeal, and the appeal would involve matters of such importance that in the opinion of the Judge leave to appeal should be given;

(4) The application for leave shall be upon notice served within four days and returnable within seven days from the judgment or order.

(5) If leave be given, the appeal shall be forthwith set down by the applicant and shall be heard by a Divisional Court without further notice.

(6) No appeal under this Rule shall be a stay of proceedings unless so ordered by a Judge. C.R. 777.

VI.—APPEALS FROM TAXATION.

508. An appeal from the report or certificate of an officer to whom the taxation of a solicitor's bill under *The Solicitors Act* has been referred shall lie and may be brought in the same manner as in the case of the report of a Master. C.R. 773.

509. In other cases a party dissatisfied with the decision of a taxing officer upon any question of principle or as to any item respecting which objections have been duly filed, may appeal from the certificate of a taxing officer to a Judge in Chambers; the practice upon the appeal shall be the same as upon an appeal from the Master in Chambers. C.R. 774, 775, and 776. *Amended.*

CHAPTER XVIII.

FORMS OF JUDGMENTS AND ORDERS, ETC.

510. Judgments and orders shall be divided into convenient paragraphs, numbered consecutively. C.R. 620.

511. It shall not be necessary in any judgment or order to reserve liberty to apply, but any party may apply to the Court from time to time as he may be advised. C.R. 622.

512. Every judgment or order shall show on its face the day of the week and month on which it was given or made and every judgment shall also show the date upon which it is actually signed, and (except judgments signed by default and *præcipe orders*) shall show the name or names of the Judge or officer who gave or made the same, and shall take effect from its date. C.R. 623 and 629.

513. An order for payment of money into Court on behalf of, or as the property of, an infant shall, unless otherwise directed, state the date of the birth of the infant. C.R. 411.

514. All judgments and orders directing payment of costs shall direct payment to the party entitled to receive the same and not to his Solicitor. C.R. 1313.

515.—(1) Every judgment, and every order pronounced in Court, shall be entered at full length.

(2) Judgment in causes and matters commenced in the Central Office, and all orders made in Court in Toronto, shall be entered in the Central Office. Orders made in Chambers in Toronto shall be entered in the office of the Clerk in Chambers.

(3) Judgments in causes or matters commenced in a local office and all orders made therein not entered at Toronto shall be entered in the office in which the cause or matter was commenced. C.R. 635.

516. Orders issued on *præcipe* and orders made in Chambers, shall not be entered in full, except:

- Orders declaring persons Lunatics; or and with respect to Lunatics' Estates;
- “ for the Sale of Infants' Estates;
- “ for Payment of Money into or out of Court, or out of an estate or fund;
- “ for Foreclosure or Sale;

Orders for the confirmation of the report of a Master or Referee;

“ vacating certificates of *lis pendens* or cautions.

Vesting Orders;

and such other orders as may from time to time, be directed to be entered. C.R. 636.

517. The Entering Clerk shall note in the margin of the judgment or order book the day of entering, and shall at the foot of the judgment or order note the same date and a reference to the book in which the entry has been made. C.R. 637.

518. All judgments and orders of a Divisional Court shall be entered in the Central Office at Toronto, and if the action was commenced elsewhere also in the office where the action was commenced. *New.*

519.—(1) Any judgment in a mortgage action may direct in general terms that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for redemption or foreclosure, (or for redemption or sale, as the case may be) and that for these purposes the cause is referred to (*naming the Master*).

(2) Any judgment directing a sale may so direct in general terms and refer the action to the Master for that purpose.

(3) Any judgment directing partition or administration may be in general terms.

(4) Any judgment in general terms shall confer upon the Master all the powers given by these rules and all other powers necessary to enable him to carry the judgment into full effect. C.R. 619, *amended.*

520. Any judgment by default may be set aside upon an application in Chambers. C.R. 639.

521. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected upon an application in Chambers. C.R. 640.

522. Where a judgment or order requires amendment in any particular on which the Court did not adjudicate, the same may be amended by the Court on motion. C.R. 641.

523. A party entitled to maintain an action for the reversal or variation of a judgment or order, upon the ground of matter arising subsequent to the making thereof, or subsequently discovered, or to impeach a judgment or order on the ground of fraud, or to suspend the operation of a judgment or order, or to carry a judgment or order into operation, or to any further or other relief than that originally awarded may move in the action for the relief claimed. C.R. 642, *amended*.

524. Upon the production of the order of His Majesty in His Privy Council, made upon an appeal to His Majesty in Council, or of the certificate of the Registrar of the Supreme Court of Canada upon an appeal to that Court, the officer of this Court with whom the judgment or order appealed from was entered shall cause the same to be entered in the judgment book, and all subsequent proceedings may be taken thereupon as if the decision had been given in this Court. C.R. 1255 and 818 *a* and *b*, *amended*.

525. Every judgment and order by which a judgment is affirmed, reversed, set aside, varied, or in any way modified, shall, in addition to any other entry thereof, be entered in the office where the original judgment or order is entered. C.R. 1262 and 635 (4), *amended*.

526. Judgments and orders pronounced in trials at Toronto shall be settled by the Registrar to whom is assigned the duty of settling judgments. C.R. 624.

527.—(1) Judgments in cases tried elsewhere than at Toronto, shall be settled by the Deputy Clerk of the Crown, Deputy or Local Registrar, at the place of trial, unless any party affected applies to the Registrar to whom is assigned the duty of settling judgments to settle the same, or to reconsider the settlement of the same by the local officer.

(2) When settled the minutes may be varied by the Trial Judge on the application of either party. C.R. 625.

528. Notice of settling minutes of a judgment or order other than a simple judgment or order for recovery of a sum certain with or without costs or dismissing an action or motion shall be given unless dispensed with by the officer by whom the judgment or order is to be settled, and the proposed minutes of the judgment or order shall be served or left in his office for inspection, and any party may take a copy thereof. C.R. 626, *amended*.

529. Where judgment may be signed upon the filing of any affidavit or production of any document, the officer shall

examine the affidavit or document produced and ascertain that it is regular and sufficient. C.R. 631.

530. Where a judgment or order is obtained upon a condition, and the condition is not complied with, the judgment or order shall be deemed to have been waived or abandoned as far as the same is beneficial to the person obtaining the same, and any person interested in the matter, on the breach or non-performance of the condition, may either take such proceedings as the judgment or order in such case may warrant, or such proceedings as might have been taken if the judgment or order had not been made. C.R. 638.

531.—(1) Every judgment shall be signed by the officer in whose office the action was commenced, and if the action was commenced in Toronto the judgment shall be signed by the Judgment Clerk of the Central Office.

(2) Every order pronounced by the Court shall be settled and signed by the Registrar or officer attending the Court at which the same is pronounced, but the Judge pronouncing such order may himself sign the same.

(3) Orders made by a Judge of the High Court in Chambers in Toronto shall be settled and signed by the Clerk in Chambers (or in his absence by the Assistant Clerk), but the Judge pronouncing such order may himself sign the same.

(4) Orders made by an officer sitting in Chambers shall be signed by him. C.R. 628 and 634.

(5) Orders made by a Judge of the Appellate Division shall be settled and signed by the Registrar of that Division or by the Judge. *New.*

532.—(1) In order to acknowledge satisfaction of a judgment, a satisfaction piece shall be signed by the party acknowledging the same or his personal representative, and his signature shall, unless the Court expressly dispenses therewith, be witnessed by some practising solicitor, expressly named by him, and attending at his request to inform him of the nature and effect of such satisfaction piece before the same is signed.

(2) The solicitor shall declare himself in the attestation thereto to be the solicitor for the person so signing the same, and state that he is witness as such solicitor; and in cases where the satisfaction piece is signed by the personal representative of a party deceased, his representative character shall be proved by the production of the probate of the will, or of the letters of administration, to the officer in custody of the judgment. C.R. 787.

(3) The satisfaction piece shall be entered in the office in which the judgment is entered, and a note thereof shall be made in the margin of book where the judgment is entered. C.R. 643 and 644.

CHAPTER XIX.

ENFORCEMENT OF JUDGMENTS AND ORDERS.

533. A judgment for the recovery by or payment to any person of money may be enforced by the issue of a writ of execution against the goods and chattels, lands and tenements of the debtor, but if the amount due on the judgment is less than \$40.00 no execution shall issue against lands and tenements. C.R. 837, *amended*.

534. Any judgment for the payment of money into Court may be enforced in the same way as a judgment for payment to any person, and the person having the carriage of the judgment shall be deemed to be a judgment creditor for the purpose of its enforcement. C.R. 838 and 839, *amended*.

535. A judgment for the recovery of money on behalf of an infant, lunatic, or person of unsound mind or on behalf of a class shall direct the money to be paid into Court, and no payment to the guardian, next friend, or committee of money of such infant or person of unsound mind, or person having the conduct of the proceedings on behalf of the class, shall be a valid discharge as against the infant or person of unsound mind, or the class. C.R. 840 (*part*).

536. Every writ of execution for the levying of any money to be paid into Court shall be indorsed by the officer issuing the same with the following notice: "All money made under this execution is to be paid into Court by the Sheriff." C.R. 840 (*part*).

537. Where any party is by a judgment entitled to any relief subject to or upon the fulfilment of any condition or contingency, he may, upon the fulfilment of the condition or contingency, apply for leave to issue execution. C.R. 841.

538. Every judgment creditor shall be entitled immediately to issue one or more writ or writs of *feri facias*; but if the judgment is for payment within a period therein mentioned, the writ shall not be issued until after the expiration of such period. C.R. 843, *amended*.

539. When a Sheriff returns that he has "goods (or lands) on hand for want of buyers," a writ of *venditioni exponas* may be issued. The Sheriff may make this return by certificate and the original writ of execution shall remain in force for the residue. C.R. 845 and 884.

540. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession. C.R. 846.

541. Where by any judgment any person therein named is directed to deliver up possession of any lands to some other person on or at any specified time after being served with the judgment, the person prosecuting the same shall without any further order for that purpose, be entitled to issue a writ of possession, on filing an affidavit showing due service of the judgment and that the same has not been obeyed. C.R. 847.

542. When a judgment directs recovery of any land and money, one writ or separate writs of execution for the recovery of possession and for the money may be issued at the election of the party entitled to recover. C.R. 849.

543. A judgment for the recovery of dower may be enforced by a writ of assignment of dower, directed to the Sheriff of the County in which the lands lie; and the writ shall set forth the lands out of which the plaintiff is to recover dower. C.R. 859.

544. Where a judgment directs the recovery of specific goods, chattels, deeds, securities, documents or any property other than land or money, a writ of delivery may be issued commanding the judgment debtor specifically to deliver up forthwith the property demanded, and directing that in case of refusal the judgment debtor be arrested and detained in prison until he complies with the terms of the writ, and also that the goods and chattels of the judgment debtor to double the value of the property in question be taken and kept until the further order of the Court to enforce obedience to the writ. C.R. 852.

545. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by attachment, or by committal. C.R. 853.

546. A writ of attachment shall not be issued without the leave of the Court or a Judge, on notice to the person against whom the attachment is to be issued. C.R. 855.

547. Where a person is taken or detained in custody under a writ of attachment, without obeying the judgment, then upon the sheriff's return that the person has been so taken or detained, the party prosecuting the judgment shall be entitled upon motion to a writ of sequestration against the estate and effects of the disobedient person. C.R. 857.

548. If an attachment cannot be executed against the person refusing or neglecting to obey the judgment, by reason of his being out of the jurisdiction of the Court, or of his having absconded, or that with due diligence he cannot be found, or if in any other case the Court may think proper to dispense with a writ of attachment, an order may be granted for a writ of sequestration against the estate and effects of the disobedient person; and it shall not be necessary for that purpose to issue an attachment. C.R. 858.

549. If a person who is ordered to pay money, neglects to obey the judgment, the Court may, upon the application of the party prosecuting the same, at the expiration of the time limited for performance, make an order for a writ of sequestration. C.R. 859.

550. A writ of sequestration shall be directed to the Sheriff, unless otherwise ordered. C.R. 860.

551. In case a person has been committed to gaol for contempt of Court, there to be detained and imprisoned until he shall have purged his contempt, if it be made to appear that he is in actual custody under such committal, the Court may modify the order and limit the term of imprisonment or grant such other relief as may in the nature and circumstances of the case seem just, but any relief that may be granted to any such person shall not relieve him from any civil liability. C.R. 861.

552. If a *mandamus* granted in an action or otherwise, or a mandatory order, injunction, or judgment for specific performance of any contract is not complied with, the Court, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment has been obtained, or some other person appointed by the Court, at the cost of the disobedient party; and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue for the amount so ascertained and costs. C.R. 862.

553. Any judgment against a Corporation wilfully disobeyed may be enforced by sequestration against the Corporation or by attachment against the directors or other officers of the Corporation. *New.* See English Rule 609.

554. Any Corporation or individual disobeying a judgment, or guilty of any other contempt of Court, may be fined. Such fine may be in lieu of or addition to punishment by attachment, committal or sequestration. *New.*

555. Any person not a party against whom obedience to a judgment may be enforced shall be liable to the same process and punishment as if he were a party. C.R. 865, *amended.*

556.—(1) Under an execution against one partner, partnership assets shall not be taken in execution, but an order may be made charging the partner's interest in the partnership property and profits with the payment of the amount of the executions in the Sheriff's hands, and by the same or a subsequent order a receiver may be appointed of the partner's share of profits whether already declared or accruing and of any other money which may be coming to him in respect of the partnership, and the Court may direct all accounts and inquiries and give all such other directions as might be directed or given if the charge had been given by the partner.

(2) The other partners may redeem the interest charged or in event of a sale may purchase the same. (*New.* See Eng. Partnership Act, 1890, sec. 23.)

557. Where goods or chattels are seized in execution under a writ of *fiery facias*, the Sheriff, or his officers acting for him, shall, on request, deliver to the owner, his agent or servant, an inventory thereof before they are removed from the premises on which they have been so seized; and no Sheriff or other officer shall sell any goods or chattels under a writ of execution until he has previously thereto given at least 8 days public notice in writing of the time and place of sale in the most public place in the municipality where such goods or chattels have been seized. C.R. 875.

558. The Sheriff shall where goods seized by him under a writ of *fiery facias* remain unsold in his hands for want of buyers, state in his return of "goods on hand for want of buyers," the time and place when and where such goods were offered for sale by him, and the names of at least three persons who were present at the time of such attempted sale, if so many were present, but if so many were not present, then

the names of those who were present, if any, and that there were no others, and if no person was present then he shall state that fact. C.R. 876.

559. The Sheriff shall not expose lands for sale under a writ of *feri facias*, or sell the same within less than twelve months from the day on which the writ is delivered to him. C.R. 877.

560. Where a writ of *feri facias* is issued against an absconding debtor in an action in which an order for attachment has been issued, the Court may order the Sheriff to sell lands of the absconding debtor before the expiration of the twelve months. C.R. 878.

561. A sale of lands shall not be had under any writ of *feri facias* until after a return of *nulla bona*, in whole or in part, in the same action or matter by the Sheriff of the same county. C.R. 879.

562. If the amount authorized to be made and levied under a writ of *feri facias* is made and levied thereunder out of goods and chattels, the person issuing the writ shall not be entitled to the expenses of any seizure or advertisement of lands thereunder; and the return to be made by the Sheriff to the writ for sale of lands shall be to the effect that the amount has been so made and levied as aforesaid. C.R. 880.

563. Before the sale of lands under a writ of *feri facias*, the Sheriff shall publish once, not less than three months and not more than four months preceding the sale, an advertisement of sale, in *The Ontario Gazette*, specifying:

- (a) The property to be sold;
- (b) The name of the plaintiff and defendant;
- (c) The time and place of the intended sale;
- (d) The name of the debtor whose interest is to be sold;

and he shall, upon one day at least in each week for four successive weeks next preceding the sale, also publish such advertisement in a public newspaper of the County or District in which the lands lie; and he shall also for three months preceding the sale, put up and continue a notice of such sale in the office of the Clerk of the Peace, and on the door of the Court House or place in which the General Sessions of the Peace of the County or District is usually holden; but nothing herein contained shall be taken to prevent an adjournment of the sale to a future day. C.R. 881.

564. The advertisement in the *Ontario Gazette* of any lands for sale under a writ of *fieri facias*, during the currency of the writ, shall be deemed a sufficient commencement of the execution to enable the same to be completed by a sale and conveyance of the lands after the writ has become returnable. C.R. 882.

565. As between the original parties to a judgment, execution may, without leave, issue at any time within six years from the date of the same. C.R. 863.

566. Where the six years have elapsed or any change has taken place by death or otherwise in the parties entitled or liable to execution, or where a party is entitled to execution upon a judgment of assets *in futuro*, the party alleging himself to be entitled to execution may apply for leave to issue execution accordingly, or to amend any execution already issued. C.R. 864.

567. Every writ of execution shall be indorsed with the name and address of the solicitor issuing the same; and if he issues the same as agent for another solicitor, the name and address of such other solicitor shall also be indorsed. Where the writ is issued by a suitor in person his name and address shall be indorsed. C.R. 868.

568. Every writ of execution for the recovery of money shall be indorsed with a direction to the officer to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon at the rate of 5 per cent. per annum from the time when the judgment was entered. C.R. 869.

569. The officer issuing the writ or renewal thereof, shall indorse upon the same a memorandum signed by him of the amount which the party issuing such writ is entitled to receive for the costs of such writ, and any renewal and for any further or other writs or renewals, and no sum not so indorsed is to be collected for such costs. C.R. 870.

570. Upon every execution there may be levied, in addition to the sum recovered by the judgment and interest thereon, the poundage, fees, expenses of execution. C.R. 871.

571. A writ of *fieri facias* shall remain in force for three years from its issue, unless renewed before its expiration, when it shall be in force for a further period of three years from the date of such renewal, and so on from time to time.

A writ may be renewed by being marked in the margin with a memorandum signed by the proper officer, stating the date of the day, month and year of such renewal, or by a certificate of renewal signed by such officer; a writ so marked (or if renewed by certificate the certificate) shall be placed in the hands of the Sheriff before its expiry, when it shall have effect and be entitled to priority, according to the time of the original delivery thereof. C.R. 872, *amended*.

572. The Sheriff to whom a writ is directed shall indorse on such writ all returns thereto and shall give a certificate thereof when demanded, which certificate shall be deemed a return. C.R. 883.

573. Where the party who delivered any writ or process to any Sheriff to be executed, or any other person entitled to call for a return requires, by a demand in writing, the Sheriff to return the writ either by returning the writ to the Court from which the writ issued, or by granting a certificate under the preceding rule, the Sheriff shall, within eight days, return the writ according to the terms of the requisition; and if he wilfully refuses or neglects to do so, he may be ordered to return the writ, and may be further proceeded against as in other cases of contumacy. C.R. 888, *amended*.

574. Upon filing the demand and proof of service an order against the Sheriff to return the writ in six days from service shall be issued on *præcipe*. C.R. 885.

575. Personal service of the demand or order on the Sheriff shall not be necessary, if it appears by affidavit that inquiry was made for him, and that he could not conveniently be found, and the demand or order was served upon the Sheriff's clerk, or bailiff in, or having charge of, the Sheriff's office. C.R. 891.

576. Where a Sheriff neglects or refuses to return any writ when so demanded, he may be ordered to pay the costs of any order taken out to compel the return, and all other costs consequent thereon, and also the costs of the previous demand. C.R. 890.

577. Where the Sheriff is ordered to return a writ, and does not make the return within the time specified in the order, the Court may order the Sheriff to be attached, or direct that an attachment shall issue unless a return be made within a limited time. C.R. 893, *amended*.

578. If the writ is not returned at the expiration of any further time limited, and if the service of the order and the

failure of the Sheriff to return the writ are proved, the Court may order the attachment to issue forthwith against the Sheriff upon an *ex parte* application. C.R. 894, *amended*.

579. The Sheriff when required to return a writ to the Court, shall file the writ or his certificate under Rule 572, in the office from which the order to return the same was issued and the officer with whom it is filed shall indorse the day and hour when it was filed. C.R. 886.

CHAPTER XX.

EXAMINATION OF JUDGMENT DEBTORS AND ATTACHMENT OF DEBTS.

580. A judgment creditor may, without an order, examine the judgment debtor upon oath before the proper officer of the County in which he resides, touching his estate and effects, and as to the property and means he had when the debt or liability which was the subject of the cause or matter in which judgment has been obtained against him was incurred, (or in the case of a judgment for costs only, at the time of the commencement of the cause or matter,) and as to the property and means he still has of discharging the judgment, and as to the disposal he has made of any property since contracting such debt or incurring such liability, (or in case of a judgment for costs only, since the commencement of the cause or matter,) and as to any and what debts are owing to him. C.R. 900.

581. Where the judgment is against a corporation the judgment creditor, may in like manner examine any of the officers of such corporation, touching the names and residences of the stockholders in the corporation, the amount and particulars of stock held or owned by each stockholder and the amount paid thereon, and as to what debts are owing to the corporation, and as to the estate and effects of the corporation; and as to the disposal made by it of any property since contracting the debt or liability, in respect of which the judgment was obtained, or, in the case of a judgment for costs only, since the commencement of the cause or matter. C.R. 902.

582. The Court may order any clerk or employee or former clerk or employee of the judgment debtor, or any person or the officer or officers of any corporation to whom

the debtor has made a transfer of his property or effects, exigible under execution, since the date when the liability or debt which was the subject of the action in which judgment was obtained was incurred, (or where the judgment is for costs only since the commencement of the cause or matter) to submit to be examined upon oath as to the estate and effects of the debtor, and as to the property and means he had when the debt or liability aforesaid was incurred, (or in the case of a judgment for costs only, at the date of the commencement of the cause or matter) and as to the property or means he still has of discharging the judgment, and as to the disposal he has made of any property since contracting the debt or incurring the liability, and as to any and what debts are owing to him. C.R. 903.

583. Where the Court is satisfied that there is reasonable ground for supposing that any person or corporation is in possession of any property of the judgment debtor exigible under execution, it may order such person or any officer of said corporation to attend and submit to examination touching the property and means of the judgment debtor. C.R. 904.

584. Where a difficulty arises in or about the execution or enforcement of a judgment, the Court may make such order for the attendance and examination of any party or person as may seem just. C.R. 910.

585. A person liable to be examined under the preceding Rules may be compelled to attend and testify, and to produce books and documents, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as in the case of a witness. C.R. 905.

586. A person liable to be examined as a judgment debtor or as an officer of a corporation which is a judgment debtor need not be served with a subpoena, but may be served with an appointment signed by the officer before whom he is to be examined at least 48 hours before the time fixed for his examination, and the person to be examined shall be paid the same fees as a witness. C.R. 906.

587. Where the judgment debtor does not attend, does not allege a sufficient excuse for not attending, or if attending, refuses to disclose his property or his transactions, or does not make satisfactory answers respecting the same, or if it appears from such examination that such debtor has concealed or made away with his property in order to defeat or defraud his creditors or any of them, the Court may order

the debtor to be committed to the common gaol of the County or district in which he resides, for any term not exceeding twelve months; or that a writ of *capias ad satisfaciendum* may be issued against the debtor, or in case the debtor is at large upon bail, may make an order for his committal to close custody; and the Sheriff, on due notice of the order, shall forthwith take the debtor and commit him to close custody until he obtains an order allowing him to go out of close custody, on giving the necessary bond in that behalf, or until he is otherwise discharged in due course of law. C.R. 907.

588. Where any officer of a corporation or other person liable to be examined does not attend, and does not show a sufficient excuse for not attending, or if attending, refuses to disclose any of the matters in respect of which he may be examined, the Court may order him to be committed to the common gaol of the County or district in which he resides, for any term not exceeding six months. C.R. 908.

589. Where a person has been committed to gaol, the Court may limit the term of imprisonment or grant such other relief as may seem just, but the order shall not relieve such person from any civil liability to any other person. C.R. 909.

590.—(1) The Court, upon the *ex parte* application of the judgment creditor, upon affidavit stating that the judgment is unsatisfied and

- (a) that some person within Ontario is indebted to the judgment debtor, or
- (b) that some person not within Ontario is indebted to the judgment debtor and that the debt to be attached is one for which he might be sued in Ontario by the judgment debtor,

may order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor, shall be attached to answer the judgment debt and that the garnishee do at a time named show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the judgment debt and the claims of any other execution creditors. Notice of the application to pay over shall, unless dispensed with, be given to the judgment debtor.

(2) When the garnishee is not within Ontario, and is neither a British subject nor in British dominions, notice of the order and not the order itself shall be served. C.R. 911, *amended*.

(3) Where a debt owing from a firm carrying on business within Ontario, but having members out of Ontario, is attached, service may be effected upon any person having control or management of the partnership business or any member of the firm within Ontario. C.R. 229, *amended*.

591. The garnishee shall be deemed to be indebted, although any debt sought to be attached has been assigned, charged or incumbered by the judgment debtor, if the assignment, charge or incumbrance is fraudulent as against creditors or is otherwise impeachable by them. C.R. 912.

592. The order from the time of service shall bind the debts attached. C.R. 913.

593. If the garnishee admits his liability he may pay the amount admitted into Court, less \$3 for his costs of paying in, and give notice of such payment to the judgment creditor. *New*.

594.—(1) If the garnishee does not pay into Court the amount due from him to the judgment debtor, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon notice to him, then the Court may order payment into Court of the debt. C.R. 914, *amended*.

(2) If the debt be not payable at the time of the attachment, an order may be made for the payment thereof when it becomes payable. C.R. 915.

595. If the garnishee disputes his liability, the Court may determine the dispute in a summary way or may order that an issue be tried in such manner as may be directed. C.R. 916, *amended*.

596.—(1) Where a garnishee has notice of any assignment of the debt or of any claim thereto or charge thereon he shall give notice thereof and the Court may order the assignee or the claimant to appear and state the nature and particulars of his claim. C.R. 920.

(2) After hearing the allegations of such third person, and of any other person who by the same or any subsequent order may be ordered to appear, or in case of such third person not appearing when ordered, the Court may order payment of the amount due from the garnishee, or may order an issue to be tried, or may bar the claim of the third person, or may make such other order as may seem just. C.R. 920, *amended*.

597. Where the debt claimed to be due or accruing from a garnishee is of the amount recoverable in a County Court, the order to show cause shall require the garnishee to appear before the Judge of the County Court of the County within which the garnishee resides, at a day and place within his County to be appointed by such Judge; and the garnishee shall be served with notice of the day and place appointed. All subsequent proceedings shall then be taken and carried on before such Judge. C.R. 917, *amended*.

598.—(1) Where the debt claimed to be due or accruing from a garnishee is of the amount recoverable in a Division Court, the order to show cause shall require the garnishee to appear before the Judge of the Division Court within whose Division the garnishee resides, at a day to be appointed in writing by such Judge, and the garnishee shall be served with notice of the day appointed.

(2) The proceedings shall thereafter be carried on before the Judge as though the garnishee summons had issued out of the said Division Court, and all proceedings may thereafter be carried on in the Division Court, and execution may be issued in the Division Court to enforce any order or judgment made. C.R. 918, *amended*.

599. Payment into Court or under an order by the garnishee shall be a valid discharge to him, as against the judgment debtor, or any assignee or claimant of whose claim he has given notice and who has been called upon to show cause under the preceding rules. C.R. 921, *amended*.

CHAPTER XXI.

ORIGINATING NOTICES.

600. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, or any person claiming to be interested in the relief sought as creditor, devisee, legatee, next-of-kin or heir-at-law of a deceased person, or as *cestui que trust* under the trusts of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may apply by originating notice for the determination without an administration of the estate or trust of any of the following question or matters:

- (a) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next-of-kin or heir-at-law, or *cestui que trust*.
- (b) The ascertainment of any class of creditors, legatees, devisees, next-of-kin, or others.
- (c) The furnishing of any particular accounts by the executors or administrators or trustees and the vouching (where necessary) of such accounts.
- (d) The payment into Court of any money in the hands of the executors or administrators or trustees.
- (e) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees.
- (f) The approval of any sale, purchase, compromise or other transaction.
- (g) The opinion, advice or direction of a Judge pursuant to The Trustee Act.
- (h) The determination of any question arising in the administration of the estate or trust.
- (i) The fixing of the compensation of any executor, administrator or trustee. C.R. 938 and 1269.

601.—(1) The persons to be served with notice under the next preceding Rule in the first instance shall be as follows:—

1. Where the notice is served by an executor or administrator or trustee,

(a) For the determination of any question under clauses (a), (e), (f), (g), (h), or (i), the persons or one of the persons whose rights or interests are sought to be affected;

(b) For the determination of any question under clause (b)

any member or alleged member of the class;

(c) For the determination of any question under clause (c), any person interested in taking such accounts;

(d) For the determination of any question under clause (d),
any person interested in such money;

(e) If there are more than one executor or administrator or trustee, and they do not all concur in the service of the notice,
those who do not concur.

2. Where the notice is served by any person other than the executors, administrators or trustees, it shall be served upon the said executors, administrators or trustees. *New.*

(1) The Judge may direct such other persons to be served as he may deem proper. C.R. 939 and 940.

602. When upon an originating notice under the Vendors and Purchasers Act it appears that some third person is or may be interested in the question raised, the Court may require notice to be given to such person so that the question may be determined not only as between the vendor and purchaser, but so as to bind such third person. *New.*

603.—(1) Where any person claims to be the owner of land, but does not desire to have his title thereto quieted under *The Quieting Titles Act*, he may have any particular question which would arise upon an application to have his title quieted determined upon an originating notice.

(2) Notice shall be given to all persons to whom notice would be given under *The Quieting Titles Act*, and the Court shall have the same power to finally dispose of and determine such particular question as it would have under the said Act. *New.*

604. Where the rights of any person depend upon the construction of any deed, will or other instrument, he may apply by originating notice, upon notice to all persons concerned, to have his rights declared and determined. *New.*

605.—(1) Where the rights of the parties depend—

- (a) Upon the construction of any contract or agreement and there are no material facts in dispute;
- (b) Upon undisputed facts and the proper inference from such facts;

Such rights may be determined upon originating notice.

(2) A contract or agreement may be construed before there has been a breach thereof. *New.*

606.—(1) The Judge may summarily dispose of the questions arising on an originating notice and give such judgment as the nature of the case may require, or may give such directions as he may think proper for the trial of any questions arising upon the application. C.R. 941.

(2) Any special directions, touching the carriage or execution of the judgment or order or the service thereof upon persons not parties, may be given as may be deemed proper. C.R. 942.

607. Service of an originating notice shall not interfere with or control any power or discretion vested in any executor, administrator or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought. C.R. 942.

CHAPTER XXII.

ADMINISTRATION, PARTITION, INFANTS' ESTATES AND DOWER.

i. *Administration.*

608. Any person claiming to be a creditor, or a specific, pecuniary, or residuary legatee, or the next-of-kin, or one of the next-of-kin, or the heir, or a devisee interested under the will of a deceased person may apply by originating notice for the administration of the estate, real or personal, of such deceased person. C.R. 944.

609. A judgment for the administration of an estate in which an infant is interested shall not be made unless the infant is made a party defendant and notice is given to the Official Guardian. C.R. 948.

610. An executor or administrator may, upon summary application, obtain a judgment for administration. C.R. 950.

611.—(1) Where judgment for administration is granted the Master to whom the matter is referred shall proceed to administer the estate in the most expeditious and least expensive manner, and in doing so shall, without special direction, take:—

- (a) An account of the personal estate of the deceased, in the pleadings mentioned, come to the hands of his executors (or administrator);

- (b) An account of his debts;
- (c) An account of his funeral expenses;
- (d) An account of the said testator's legacies;
- (e) An inquiry as to what parts, if any, of the real and personal estate are outstanding or disposed of;
- (f) An inquiry as to what real estate the deceased was seised of, or entitled to, at the time of his death;
- (g) An inquiry as to what incumbrances affect the real estate;
- (h) An account of the rents and profits of the real estate received by any party since the death;
- (i) An account of what is due to such of the incumbrancers as shall consent to sale in respect of their incumbrances;
- (j) An inquiry as to what are the priorities of such last mentioned incumbrances.

(2) The Master shall, under any such reference, have power to deal with both the real and personal estate, including the power to give all necessary directions for its realization, and shall finally wind up all matters connected with the estate, without any further directions, and without any separate, interim, or interlocutory reports or orders, except where the special circumstances of the case absolutely call therefor.

(3) All money realised from the estate shall forthwith be paid into Court, and no money shall be distributed or paid out for costs or otherwise, without an order of a Judge, and on the application for an order for distribution, the Judge may review, amend, or refer back the report, or make such other order as may seem just. C.R. 953.

612. It shall not be obligatory on the Court to pronounce or make a judgment or order for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order. C.R. 954.

613. In any action or proceeding for the administration or execution of trusts by a creditor or beneficiary under a will, intestacy or instrument of trust, where no accounts or insufficient accounts have been rendered, the Court may, instead of pronouncing judgment for administration:—

- (a) Order that the executors, administrators or trustees, shall render to the plaintiff or applicant a proper statement of their accounts, with an intimation that if it is not done they may be made to pay the costs of the proceedings, and may direct the action or proceeding to be stayed or to stand over in the meantime, as may seem just;
- (b) Where necessary, to prevent proceedings by other creditors, or by beneficiaries, make the usual judgment for administration, with a provision that no proceedings are to be taken thereunder without the leave of the Court. C.R. 955.

614. Special directions touching the carriage or execution of the judgment may be given as may be deemed expedient; and in case of applications by two or more persons, or classes of persons, judgment may be granted to one or more of the claimants as may seem just; the carriage of the judgment may be subsequently given to other persons interested. C.R. 989.

ii. *Partition.*

615.—(1) An adult person entitled to compel partition of land or any estate or interest therein may, by originating notice served on one or more of the persons entitled to a share therein, apply for partition or sale.

(2) Where an infant is interested, he shall be made a party defendant before judgment, and notice shall be given to the Official Guardian.

(3) The Master shall proceed in the least expensive and most expeditious manner, for partition or sale, the adding of parties, the ascertainment of the rights of the various persons interested, the taxation and payment of costs, and otherwise.

(4) All money realized shall forthwith be paid into Court, and no moneys shall be distributed or paid out for costs or otherwise, without an order of a Judge; and on the application for an order for distribution, the Judge may review, amend, or refer back to the Master his report or make such other order as may seem just. C.R. 956, *amended*.

616. An application for partition on behalf of an infant by his guardian or next friend may be made with the sanction of a Judge to be first obtained upon notice to the Official Guardian. *New*.

iii. *Dower.*

617. Where the right to dower is not disputed, either the dowress or the tenant of the freehold may apply upon originating notice for a writ for the assignment of dower. C.R. 959, *amended*.

iv. *Infants' Estates.*

(See 1 Geo. V, ch. 35, secs. 6 and 7.)

618. All applications for the sale, mortgage, lease, or other disposition of an infant's estate shall be made to a Judge upon notice to the Official Guardian. C.R. 960 and 1309.

619.—(1) The affidavits filed shall state the nature and amount of the personal property to which the infant is entitled, the necessity of resorting to the real estate, its nature, value, and the annual profits thereof; the occupation of the lands to be disposed of, and state specifically the relief desired, and circumstances sufficient to justify the order sought.

(2) If an allowance for maintenance is desired, a case shall also be stated and made, to justify such an order, and to regulate the amount.

(3) If the appointment of a guardian is desired, a case shall be stated and made, for the appointment of the person proposed. C.R. 964.

620.—(1) Unless otherwise directed by the Judge, the infant shall be produced before him or before a Master, and the infant, where above the age of 14 years, shall be examined apart by the Judge or officer before whom he is produced, upon the matter of the petition, and as to his consent thereto.

(2) Where the infant is out of Ontario the Judge may direct inquiry as to the infant's consent by his examination in such manner as may seem proper.

(3) It shall not be necessary to examine an infant under 14 years of age, unless otherwise ordered, but it shall be sufficient for the officer before whom such infant is produced, to certify that he has been produced, and that he is under the age of 14 years. C.R. 965, 966 and 967.

621. Witnesses in support of the application may be examined *vivâ voce* before the Judge making the order or before a Master of the Supreme Court. C.R. 968.

CHAPTER XXIII.

MANDAMUS, ETC.

622. Mandamus prohibition and *certiorari* may be granted upon a summary application by originating notice. C.R. 1080, *amended*.

623. No writ of mandamus prohibition or *certiorari* shall be issued, but all necessary provisions shall be made in the judgment or order. C.R. 1083, *amended*.

624. The Court may require notice to be given to any person claiming any right or interest in the subject-matter of the application. C.R. 1086, *amended*.

CHAPTER XXIV.

INTERPLEADER.

625. Relief by way of interpleader may be granted:—

(a) Where the person seeking relief (hereinafter called the applicant) is under liability for any debt, money, goods or chattels, for or in respect of which he is, or expects to be, sued by two or more persons (hereinafter called the claimants) making adverse claim thereto:

(b) Where the applicant is a Sheriff and claim is made to any money, goods, or chattels, lands or tenements, taken or intended to be taken in execution under a writ of execution, or to the proceeds or value thereof, by any person other than the person against whom the process issued. C.R. 1103.

626. The applicant shall satisfy the Court by affidavit, or otherwise:—

(a) That he claims no interest in the subject-matter in dispute, other than in respect of a lien or for charges or costs;

(b) That he does not collude with any of the claimants; and

- (c) That he is willing to pay or transfer the subject-matter into Court, or to dispose of it as the Court may direct. C.R. 1104.

627. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another. C.R. 1105.

628. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons; and the Court may stay all proceedings in the action. C.R. 1106.

629. The applicant may make a motion calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them. C.R. 1107.

630. Where a claimant does not appear on the motion after having been served with a notice of motion calling on him to appear and maintain or relinquish his claim, or, having appeared, neglects or refuses to comply with any order made thereafter, an order may be made declaring him and all persons claiming under him to be for ever barred as against the applicant and all persons claiming under him, but the order shall not affect the rights of the claimants as between themselves. C.R. 1108.

631. Where the claimants appear on the motion, any claimant may be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or an issue between the claimants may be stated and tried, and in the latter case the order shall direct which of the claimants shall be plaintiff, and which defendant. C.R. 1109.

632. The Court may, with the consent of both claimants, or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and, subject to appeal, decide the same in a summary manner. C.R. 1110.

633. Where the question is one of law, and the facts are not in dispute, the Court may decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the Court. C.R. 1111.

634. Where goods or chattels have been seized in execution by Sheriff, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by

way of security for debt, the Court may order a sale, and direct the application of the proceeds of the sale in discharge of the amount due the claimant if it is not disputed, or that sufficient to answer the claim be paid into Court pending trial of the claim. C.R. 1112, *amended*.

635. Where a Sheriff applies for relief by interpleader, and any execution creditor declines to join in contesting the claim of the adverse claimant, the Court may direct that such creditor shall be excluded from any benefit which may be derived from the contestation of the claim. C.R. 1113.

636. The Court which tries the issue may finally dispose of the interpleader proceedings, including all costs not otherwise provided for. C.R. 1114.

637. When a Sheriff finds property in the possession of a debtor against whose property he has a writ or other process in his hands, and a claim is set up to such property by or on behalf of a third person who is out of possession or is in joint possession with the debtor, the claim of such third person shall be made in writing, and upon receipt thereof the Sheriff shall forthwith give notice thereof to the execution creditor, and the execution creditor shall, within seven days thereafter, give notice to the Sheriff that he admits or disputes the claim. If the execution creditor admits the title of the claimant, and gives notice as directed by this Rule, he shall only be liable to such Sheriff for fees and expenses incurred before the receipt of the notice admitting the claim; and no action shall be brought against the Sheriff in respect of the seizure of the property. C.R. 1115.

638. Where the execution creditor does not in due time admit or dispute the title of the claimant to the property, and the claimant does not withdraw his claim thereto by notice in writing to the Sheriff, the Sheriff may apply for relief by interpleader. C.R. 1116, *amended*.

639. In case a Sheriff has more than one writ of execution against the same property, or there is more than one claimant to goods seized under the execution, he shall make one application, and make all the execution creditors and claimants parties. C.R. 1118, *amended*.

640. Where there is an execution from the Supreme Court the application for interpleader shall be made in the Supreme Court notwithstanding that other executions on the Sheriff's hands have issued from County or Division Courts. C.R. 1113, *amended*.

641.—(1) Where an issue is directed to be tried, the costs of the Sheriff incurred in consequence of the adverse claim, shall be a first lien or charge upon the moneys or goods which may be found in the issue to be applicable upon the execution.

(2) The Sheriff may also tax such costs, and serve a copy of the certificate of taxation upon each of the parties to the issue, and the successful party upon the issue shall tax such costs as part of his costs of the cause, and upon receipt thereof shall pay over the same to the Sheriff.

(3) Where after the service of the certificate the party succeeding upon the issue neglects or refuses to tax such costs, the Sheriff may obtain an order that the successful party shall pay the same.

(4) Where the proceedings are compromised between the parties thereto, the costs of the Sheriff shall be paid by the party by whom the execution was issued. C.R. 1120, *amended*.

642. Where, after the seizure, an issue is directed, and the property seized remains, pending the trial of the issue, in the custody of the Sheriff who seized the same, the Court may make an order for the payment to the Sheriff of a reasonable sum for his trouble in and about the custody of the property; and the Sheriff shall have a lien upon the property for payment of the same in event of the property being held to be exigible against the claimant. C.R. 1121, *amended*.

643. The Court may make all such orders respecting the satisfaction or payment of any lien or charges of the applicant as may be just and reasonable. C.R. 1122, *amended*.

644. Relief by interpleader may be granted in a County Court,

1. (a) Where the applicant is sued in the County Court;
- (b) Where the applicant is not so sued and the debt, money, goods or chattels in question do not exceed in value \$500;

2. Where the applicant is a Sheriff acting under a writ or writs of execution issued from a County Court or different County Courts the application may be made to the Judge of his own County. C.R. 1123, *amended*.

645. All subsequent proceedings shall be had and taken in the County where the application is made; but the Judge to whom the application is made may order that the subsequent proceedings be had and taken in any other County, if that course seems just and more convenient. C.R. 1124.

646. Where the amount claimed under or by virtue of writs of execution, in the Sheriff's hands, does not exceed the sum of \$400, exclusive of interest and Sheriff's costs, or when the goods seized are not, in the opinion of the Judge or other person making the order, of the value of more than \$400, the issue may be directed to be tried in a County Court and in such case all subsequent proceedings shall be had and taken in the County Court.

647. Where the amount of the execution or the value of the goods does not exceed \$100, the issue may be directed to be tried in a Division Court, and thereafter all proceedings shall be carried on in such court. C.R. 656.

648. When money has been paid into Court and an issue has been directed to be tried in the County or Division Court the money shall be paid out upon the order of the County or Division Court. C.R. 1127, *amended*.

CHAPTER XXV.

COSTS.

649. Where an action of the proper competence of a County Court is brought in the Supreme Court, or an action of the proper competence of a Division Court is brought in the Supreme Court, or in a County Court, and the Judge makes no order to the contrary the plaintiff shall recover only County Court costs, or Division Court costs, as the case may be, and the defendant shall be entitled to tax his costs of suit as between solicitor and client; and so much thereof as exceeds the taxable costs of defence which would have been incurred in the County Court or Division Court, shall, on entering judgment, be set off and allowed by the Taxing Officer against the plaintiff's County Court or Division Court costs to be taxed, or against the costs to be taxed and the amount of the verdict if it be necessary; and if the amount of costs so set off exceeds the amount of the plaintiff's verdict and taxed costs, the defendant shall be entitled to execution for the excess against the plaintiff. C.R. 1132.

650. Where judgment is entered for default and the action is within the jurisdiction of an inferior Court, the taxation shall be on the scale of fees in such Court. C.R. 1133.

651. The Taxing Officer may make all inquiries necessary to determine whether an action is within the competence of an inferior Court. See C.R. 1133.

652.—(1) A judgment or order may direct payment of a sum in gross in lieu of taxed costs. C.R. 1137.

(2) No sum in excess of \$30 shall be allowed, without taxation, save by a Judge. C.R. 1158.

653. In actions or proceedings for administration, or partition, or administration and partition, unless otherwise ordered by a Judge, instead of the costs being allowed according to the tariff, each person properly represented by a solicitor, and entitled to costs out of the estate—other than creditors not parties to the action or proceeding—shall be entitled to his actual disbursements in the action or proceeding, not including counsel fees, and there shall be allowed for the other costs of the suit payable out of the estate, a commission on the amount realized, or on the value of the property partitioned, which commission shall be apportioned among the persons entitled to costs, as may seem just. Such commission shall be as follows:

On the first \$500	20 per cent.
On every additional \$100 over \$500 and up to \$1,500	5 " "
On every additional \$100 over \$1,500 and up to \$4,000	3 " "
On every additional \$1,000 over \$4,000 and up to \$10,000	2½ " "
On every additional \$1,000 over \$10,000	1 " "

and such remuneration shall be in lieu of all fees, whether between party and party or between solicitor and client.

(2) Where an order or judgment in any such action or proceeding by any form of words directs that the costs thereof be taxed, it shall be taken to mean the allowance of commission and disbursements, in accordance with subsection 1, unless it is otherwise expressly provided. C.R. 1146.

654. The costs of every interlocutory *vivâ voce* examination and cross-examination shall be borne by the party who examines unless, as to the whole or part thereof, it be other-

wise directed, in actions in this Court by the Senior Taxing Officer, on his appointment served, and in actions in a County Court by a Judge thereof. In actions in the Supreme Court, if more than \$25.00 is claimed, besides the disbursement in procuring the attendance of the person examined, the sum to be allowed for the examination or cross-examination shall be fixed by the Senior Taxing Officer on such appointment. C.R. 1136.

655. Where the Official Guardian or other guardian of an infant, lunatic, or person of unsound mind, is entitled to costs, the Court may order a successful party to pay such costs and add them to his own. C.R. 1138.

656. Where several actions are brought on one bond, recognizance, promissory note, bill of exchange, or other instrument, or where several actions are brought against the maker and indorser of a note, or against the drawer, acceptor or indorser of a bill of exchange, there shall be collected or recovered the costs taxed in one action only, at the election of the plaintiff, and the actual disbursements only in the other actions, unless the Court otherwise orders; but this provision shall not extend to any interlocutory costs. C.R. 1176.

657. Where any one of the persons constituting a class formed by a Master for representation in his office by one solicitor, insists on being represented by a different solicitor, he shall pay the costs of his own solicitor and all such further costs as are occasioned to any of the parties by his being represented by a different solicitor from the solicitor so nominated. C.R. 1188.

658. No *ex parte* order in an action shall contain any direction as to costs, but the costs of any such motion shall be dealt with by the Taxing Officer. *New.*

659. Costs claimed upon a specially indorsed writ may be taxed although paid, and if more than one-sixth be taxed off the plaintiff's solicitor shall bear the cost of taxation. C.R. 139, *amended.*

660.—(1) Unless otherwise ordered, if a party who serves a notice of motion does not set the motion down, he shall be deemed to have abandoned the same, and the opposite party shall thereupon be entitled without an order to the costs of the motion.

(2) A party who serves a notice of motion may countermand the same by notice served on the opposite party, who shall thereupon be entitled to the costs of the motion.

(3) In either of such cases the costs may be taxed without an order, upon the production of the notice of motion served, with an affidavit that the motion was not set down, or of the notice of countermand served; and if the costs are not paid within 4 days from taxation, the party entitled thereto may issue an execution therefor. C.R. 790, *amended*.

661. Where costs are ordered to be paid, they may be taxed either by the Taxing Officer at Toronto or by the proper officer where the proceedings are begun. C.R. 1157, *amended*.

662. Where a notice of taxation is necessary, one day's notice shall be sufficient if served with a copy of the bill of costs and affidavit of disbursements. C.R. 1159.

663. The Taxing Officer may direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and disallow the costs of any person whose attendance he considers unnecessary in consequence of the interest of the party in the fund or estate being small or remote, or sufficiently protected by other parties interested. C.R. 1161.

664. Where any party entitled to costs refuses or neglects to bring in his bill of costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the Taxing Officer shall certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect. C.R. 1163.

665. Where a party entitled to receive costs is liable to pay costs to any other party, the Taxing Officer may adjust the same by way of deduction or set off. C.R. 1164, *amended*.

666. A set-off of damages or costs between parties shall not be allowed to the prejudice of the solicitor's lien for costs in the particular action in which the set-off is sought; but interlocutory costs in the same action awarded to the adverse party may be set off notwithstanding any lien. C.R. 1165.

667. Between party and party the Taxing Officer shall not allow the costs of proceedings:

- (a) Unnecessarily taken;
- (b) Not calculated to advance the interests of the party on whose behalf the same were taken;
- (c) Incurred through over-caution, negligence or mistake;

or (d) Which do not appear to have been necessary or proper for the attainment of justice or defending the rights of the party. C.R. 1175 and 1176.

668. Upon a taxation between a solicitor and his client, the Taxing Officer may allow the costs of proceedings taken which were in fact unnecessary where he is of the opinion that such proceedings were taken by the solicitor because, in his judgment, reasonably exercised, they were conducive to the interests of his client, and may allow the costs of proceedings which were not calculated to advance the interest of the client where the same were taken by the desire of the client after being informed by his solicitor that they were unnecessary and not calculated to advance his interests. This rule shall not apply to solicitor and client costs payable out of a fund not wholly belonging to the client, or, by a third party. C.R. 1176, *amended*.

669. Where two or more defendants defend by different solicitors under circumstances entitling them to but one set of costs, the Taxing Officer shall allow but one set of costs; and if two or more defendants defending by the same solicitor separate unnecessarily in their defences, or otherwise, the Taxing Officer shall allow but one defence and set of costs. C.R. 1162.

670. It shall be the duty of the Taxing Officer, without any direction, to disallow in whole or in part the costs of any writ, pleading, petition, affidavit, evidence, account, statement, or other proceeding, which is improper, unnecessary or contains unnecessary matter, or is of unnecessary length. Affidavits and evidence may be disallowed, although the same may be entered as read in any judgment or order. C.R. 1154, *amended*.

671. When anything in the course of an action or reference which ought to have been admitted, has not been admitted, the party who neglected or refused to make the admission may be ordered to pay the costs occasioned by his neglect or refusal. C.R. 1149.

672.—(1) An affidavit of disbursements shall be made by the solicitor in the cause or matter or some clerk having the management thereof, or by the client, setting forth the sums paid to counsel, the names of witnesses, their places of abode, the places at which they were subpoenaed, and the distance which each such witness was necessarily obliged to travel in order to attend the trial, and the sums paid to them, and shall state that all such witnesses were necessary and material for the client in the cause, or matter, that they did attend, and that they did not attend as witnesses in any other cause

(or otherwise, as the case may be) and the number of days which each witness was necessarily absent from home in order to attend such trial.

(2) If a solicitor attends as a witness it shall be stated whether or not he attended at the place of trial as solicitor or witness in any other cause, and whether or not he had any other business there. The day on which the trial took place shall be stated. C.R. 1173.

(3) The necessity for maps and plans used at the trial, the sum paid for them, and that they were prepared or procured with a view to the trial of the cause, shall be shewn by the affidavit of disbursements. C.R. 1174.

673. In cases not otherwise provided for, the Taxing Officer may allow a reasonable sum for the expense of a shorthand writer, on the certificate of the Judge before whom the examination of any witness or witnesses in any such cause, matter or other proceeding takes place; and also on the certificate of a Local Master in references before him when the parties agree to the employment of a shorthand writer. C.R. 1143 and 1270.

674. Costs may be taxed on an award, although the time for appealing from or moving against the award has not elapsed. C.R. 1166.

675. The costs of removing a bond or other security from the files of the Court for the purpose of bringing an action thereon, may be taxed as costs in the cause in the action brought thereon. C.R. 1156.

676.—(1) Costs shall be allowed and taxed according to Tariff A appended to these Rules, and no other fees, costs or charges than are therein set forth shall be allowed in respect of the matters thereby provided for.

(2) The fees and disbursements payable upon proceedings in the Supreme Court and in the County Courts shall be those enumerated in the Tariff B appended to these Rules.

(3) The fees and allowances to be taken and received by Sheriffs other than those provided for by any statute shall be the fees and allowances set forth in the Tariff C appended to these Rules.

(4) When the costs incurred in Canada of an appeal to His Majesty in his Privy Council have been awarded and the same have not been taxed by the Registrar of the Privy Council the same may be taxed by the Senior Taxing Officer, and the taxation shall be according to the scale of Tariff D.

677. Costs payable out of the proceeds of lands sold under the Devolution of Estates Act, with the approval of the Official Guardian, shall be taxed by the Senior Taxing Officer, C.R. 1258.

678. All bills of costs or disbursements in proceedings for the administration or partition, or for the foreclosure, redemption or sale of mortgaged premises in which an infant lunatic, or person of unsound mind is interested, and all bills in other actions where the amount is to be paid out of an estate or out of a fund in Court, or in which any infant, lunatic or person of unsound mind is interested, shall be revised by one of the Taxing Officers at Toronto, before the amount thereof is inserted in any certificate, report, judgment, or order; but in case of urgency leave may be granted to issue a writ of execution, subject to the future revision by the Taxing Officer, and if the amount taxed is reduced on revision, the party entitled to the costs shall forthwith give credit upon the execution for the amount struck off. C.R. 1167, 1168 and 1169. *Amended.*

679. The local officer shall forthwith, after taxing any such bill of costs, transmit the same by mail to the Senior Taxing Officer, and he shall allow in the bill the postage for the transmission and return of the bill, and shall prepay the same; and shall allow in the bill the sum of one dollar as a fee for the revision of the bill; and a law stamp for that sum, with postage stamps for return postage, shall be paid at the time of taxation by the party procuring the bill to be taxed, and be transmitted therewith. C.R. 1170.

680. The Taxing Officer at Toronto, upon receiving the bill of costs shall revise the taxation either *ex parte*, or upon notice to the Toronto agent of the solicitor whose bill is in question, as he may see fit, giving notice in all cases where the taxation is not clearly erroneous, or where the amount in question is large. Notice may be by appointment mailed to the address of the solicitor or of his agent. The Taxing Officer shall re-transmit the bill when revised to the local officer. C.R. 1171.

681.—(1) A party dissatisfied with the allowance or disallowance by the Taxing Officer of the whole or any part of any item may, at any time before the certificate is signed, deliver to the other party interested therein, and to the Taxing Officer, objections in writing to such allowance or disallowance, specifying concisely the item objected to, and may thereupon apply to the Taxing Officer to review the taxation in respect of the same.

(2) The Taxing Officer shall, upon request, hold the taxation open for a reasonable time in order to allow such objections to be delivered. C.R. 1182.

682. The Taxing Officer shall then reconsider and review his taxation upon such objections, and he may receive further evidence in respect thereof, and, if required, he shall state either in his certificate of taxation or by reference to such objections, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto. C.R. 1183.

683.—(1) A Sheriff claiming any fees, poundage, expenses or remuneration, which have not been taxed, shall, upon being required by either party, and on payment of 25 cents for a copy of his bill in detail (which he shall be bound to render) have his fees, poundage, expenses or remuneration, as the case may be, taxed by the proper Taxing Officer of his county. C.R. 1193.

(2) A Sheriff shall not, without taxation, collect any fees, costs, poundage or expenses, after he has been required to have the same taxed. C.R. 1195.

684. The Sheriff or the party requiring taxation may obtain an appointment for taxation, and the Taxing Officer, upon proof of service of such appointment or upon the parties attending before him, shall examine the bill, and satisfy himself that the items charged in such bill are correct and legal, and strike out items charged for unnecessary services, and give, when requested, a certificate of the taxation. C.R. 1196 and 1194, *amended*.

685. A party dissatisfied with the taxation may appeal therefrom as in ordinary cases of taxation between party and party. C.R. 1197.

686.—(1) Where part only is made by the Sheriff on, or by force of an execution against goods and chattels, the Sheriff shall be entitled, besides his fees and expenses of execution, to poundage only upon the amount so made by him, whatever be the sum indorsed upon the writ; and where the personal estate, except chattels real, of the judgment debtor is seized or advertised on or under an execution, but not sold by reason of satisfaction having been otherwise obtained, or from some other cause, and no money is actually made by the Sheriff on or by force of such execution, the Sheriff shall be entitled to the fees and expenses of execution and poundage only on the value of the property seized not exceeding the amount indorsed on the writ, or such less sum as the Court may deem reasonable.

(2) Where land or chattels real of the judgment debtor have been advertised under an execution, but not sold by reason of payment or satisfaction having been otherwise obtained on, or within one month before, the day on which the property has been advertised to be sold, or any day to which the sale may be adjourned, the Sheriff shall be entitled to the fees and expenses of the execution, and the poundage only on the value of the debtor's interest in the property not exceeding the amount indorsed on the writ, or such less sum as the Court may deem reasonable. C.R. 1190.

687. Where there are writs of execution upon the same judgment to several counties or districts and the personal estate of the judgment debtor has been seized or advertised, in one or in one or more or all of such counties, but not sold, by reason of satisfaction having been obtained under and by virtue of a writ in any of the counties, and no money has been actually made on the execution, the Sheriff shall not be entitled to poundage, but to mileage and fees only for the services actually rendered and performed by him, and the Taxing Officer may allow him a reasonable charge for such services, in case no special fee therefor is assigned in any tariff of costs. C.R. 1191.

688. Where a person liable on an execution is dissatisfied with the amount of poundage fees or expenses of execution claimed by a Sheriff, the Court may, before or after payment thereof, upon the application of such person, upon notice to the Sheriff, if the amount appears to be unreasonable, notwithstanding that it is according to the tariff, reduce the same or order the same to be refunded upon such terms as may seem just. C.R. 1192.

689.—(1) Where a solicitor has been employed to prosecute or defend any cause or matter, the Court may, upon a summary application, declare such a solicitor, or his personal representatives to be entitled to a charge upon the property recovered or preserved through the instrumentality of such solicitor, for his costs, charges and expenses of or in reference to such cause, matter or proceeding; and all conveyances and acts done to defeat, or which may operate to defeat, such charge or right shall, unless made to a *bonâ fide* purchaser for value without notice, be absolutely void and of no effect as against such charge.

(2) The Court may make an order for taxation of such costs, charges and expenses and for the raising and payment of the same out of the property. C.R. 1129.

CHAPTER XXVI.

DEVOLUTION OF ESTATES.

690. Before an executor or administrator takes proceedings under *The Devolution of Estates Act*, for the sale of real estate in which an infant is concerned, he shall give to the Official Guardian or Local Guardian appointed under that Act notice of the intention to sell, and shall not be entitled to any expenses incurred before giving such notice. C.R. 971.

691. The Official Guardian or other officer aforesaid, or any person interested in the land or in the proceeds of the sale thereof, may apply to a Judge, upon notice to all parties concerned or to such parties as the Judge may direct, for such direction or order touching the real estate and the proceeds thereof or the costs of the proceedings as to the Judge may seem meet. C.R. 972.

CHAPTER XXVII.

QUIETING TITLES.

692. A petition for an investigation of titles, under *The Quieting Titles Act*, shall not include two or more properties dependent on separate and distinct titles, but may include any number of lots or parcels belonging to the same person, and dependent on one and the same chain of title. C.R. 991.

693. Where an application is made under section 3 of the said Act, the proper officer in the Central Office shall attend one of the Judges with the petition, for directions, before the same is referred for investigation. C.R. 992.

694. All petitions under the said Act shall be filed in the Central Office, and may, at the option of the petitioner, be referred to the Referee in Toronto or to any Local Master. C.R. 993.

695. The Senior Registrar shall be the sole Inspector of Titles, in respect of petitions filed under *The Quieting Titles Act*, and the sole Referee in Toronto. C.R. 994.

696. Petitions to be referred to any Local Referee shall be indorsed thus: 'To be referred to the Referee at _____ and to Mr. _____ Inspector of Titles.' C.R. 995.

697. Petitions filed unindorsed shall, without order, stand referred to the Referee in Toronto, but a petition indorsed with the name of any Local Referee shall stand referred to him. C.R. 996.

698. Petitions to be referred to a Local Referee shall be entered with the Inspector of Titles before being filed. C.R. 997.

699. A Local Referee shall be entitled to confer or correspond from time to time with the Inspector of Titles, for advice and assistance on questions of practice or evidence, or other questions arising under the Act or under these Rules. C.R. 998.

700. Upon the filing of the petition it shall be delivered or mailed by the proper officer to the Referee. C.R. 999 and 1276.

701. The particulars necessary, under section 7 of the Act, to support the petition shall be delivered or sent by the petitioner, or his solicitor, to the Referee, and shall be forthwith examined and considered by him. C.R. 1000.

702. In every case of an investigation of the title to property under the said Act, the petitioner shall shew, by affidavit or otherwise, whether possession has always accompanied the title under which he claims the property, or how otherwise, or shall shew some sufficient reason for dispensing with such proof either wholly or in part. C.R. 1001.

703. Where there is no contest, the attendance of the petitioner, or of any solicitor on his behalf, shall not be required on the examination of the title, except where, for any special reason, the Referee directs such attendance. C.R. 1002.

704. If, on such examination as aforesaid, the Referee finds the proof of title defective, he shall deliver or mail to the petitioner, or his solicitor, a memorandum of such finding, stating shortly therein what the defects are, and he shall therein state as far as possible all the objections to the title. C.R. 1003.

705. When the Referee finds that a good title is shewn he shall prepare the necessary advertisement, and, unless the publication thereof is dispensed with under section 14 of the said Act, the same shall be published in the *Ontario Gazette* and in any other newspaper or newspapers in which the Referee thinks it proper to have the same inserted; and a copy of the advertisement shall also be put up on the door

of the court house of the county where the land lies, and, unless the nearest post office is in a city, in some conspicuous place in the post office which is situate nearest to the property, the title of which is under investigation; and the Referee shall indorse on the advertisement so prepared by him, the name of the newspaper or newspapers in which the same is to be published, and the number of insertions to be given therein respectively, and the period (not less than four weeks) for which the notice is to be continued at the court house and post office respectively. C.R. 1004.

706. Any notice of the application to be served or mailed under section 16 of the Act, shall be prepared by the Referee; and directions shall in like manner be given by him as to the persons to be served with the notice, and as to the mode of serving the same. C.R. 1005.

707. The Inspector, or Toronto Referee, shall from time to time confer with one of the Judges in respect of matters before such Inspector or Toronto Referee, as there may be occasion. C.R. 1006.

708. When any person has shown himself, in the opinion of a Local Referee, to be entitled to a certificate or conveyance under the Act, and has published and given all the notices required, the Referee shall write at the foot of the petition, and sign, a memorandum to the following effect: "I am of opinion that the petitioner is entitled to a certificate of title (or conveyance) as prayed (or subject to the following incumbrances, etc., *as the case may be*);" and shall transmit the petition (charges prepaid,) with the deeds, evidence, and other papers before him in reference thereto, to the Inspector of Titles, who shall examine the same carefully, and if he finds any defect in the evidence of title, or in the proceedings, he shall, by correspondence or otherwise, point the same out to the petitioner, or his solicitor, or to the Referee, as the case may be, in order that the defect may be remedied before a Judge is attended with the petition and papers for approval. C.R. 1007.

709. Where the Inspector, or Referee at Toronto, finds that the petitioner has shewn himself entitled to a certificate of title, or a conveyance under the Act, and has published and given all the notices required, he shall write at the foot of the petition, and sign, a memorandum to the same effect as is required from a Local Referee, and shall prepare the certificate of title, or conveyance, and shall engross the same in duplicate, one being on parchment or parchment paper; and shall sign the same respectively at the foot or in the margin thereof; and shall attend one of the Judges therewith, and with the deeds, evidence, and other papers before

him in reference thereto; and, on the certificate or conveyance being signed by the Judge, the Inspector or other Referee aforesaid, as the case may be, shall deliver or transmit the same to the Central Office, to be sealed and registered, and the proper officer in the Central Office shall deliver or transmit the same when so sealed and registered, to the petitioner, his solicitor, or agent, for registration. C.R. 1008.

710. When a certificate of title or conveyance under the Act has been granted, the Inspector or Referee may, without further order, deliver, on demand, to the party entitled thereto, or his solicitor, all deeds and other evidences of title, not including affidavits made, and evidence given in the matter of the title; and shall take his receipt therefor. C.R. 1009.

711. The Inspector and Referee shall keep a book and preserve therein a copy of all his letters under these Rules. C.R. 1010.

712. The applicant shall pay, or prepay, as the case may be, all postages and other expenses of transmitting letters or papers. C.R. 1011.

713. Petitions under section 33 of the Act shall be filed and proceeded with in the same manner (as nearly as may be) as petitions for an indefeasible title. C.R. 1012.

714. The certificate of the Inspector or of a Referee upon any contest before him shall be filed and an appeal shall lie from such certificate in the same way as from a Master's Report. C.R. 1013, *amended*.

CHAPTER XXVIII.

ACCOUNTANT'S OFFICE.

715. All such books and records shall be kept as may be directed by the Judges of the Supreme Court or the Finance Committee, and the forms used for directions and cheques shall be subject to its approval. *New*.

716. In the month of January in each year the Accountant shall present to the Finance Committee a statement of the amounts paid for salaries and expenses of the Accountant's office during the previous year, and the names of the persons to whom such amounts were paid, and also an estimate of the salaries and expenses of his office for the cur-

rent year; and such estimates shall be examined by the Finance Committee, who shall be at liberty to make such variations therein as may be deemed proper, and when approved a fiat shall be indorsed thereon or appended thereto which shall authorize the payment of the sums mentioned and cheques may issue accordingly. C.R. 69.

717. An auditor shall be appointed whose duty it shall be to see that books and records are kept as required by the Finance Committee and to examine and verify the accounts, books and securities in the Accountant's office and to compare the balances with the Bank Account, and to make such further and other examination of the said books and securities as he may think necessary for the proper audit thereof, and to report forthwith, after making such examination, the result thereof to the said Committee, and from time to time to make such suggestions as may appear to be desirable for the efficient keeping of the accounts. C.R. 67.

718. The Auditor's remuneration, which is fixed at the sum of \$500 per annum, shall be payable in monthly instalments, as part of the expenses of the Accountant's office. C.R. 68.

719.—(1) It shall be the duty of the Official Guardian to see that moneys payable on mortgages held by the Accountant, in which persons for whom the Guardian has acted are interested, are promptly paid, and that the mortgaged premises are kept properly insured, and that the taxes thereon are duly paid.

(2) There shall be paid to the Official Guardian for services rendered by him under this Rule the sum of \$200 per annum, and the same shall be deemed part of the expenses of the Accountant's office. C.R. 19.

720.—(1) All mortgages and other securities taken under an order or judgment of the Court, and all bonds and other instruments required by the practice of the Court for the purpose of security, save security for costs, shall, unless otherwise ordered, be taken in the name of the Accountant, and shall be deposited in his office.

(2) Mortgages and other securities made to, or vested in the Accountant, in any action or matter, are to be held by him subject to the order of the Court; but no duty or liability save as custodian of the instrument shall by reason of such mortgage or other security being made, given to or vested in him, be imposed on the Accountant in respect of such mortgage or security or any property thereby vested in him. C.R. 66.

721.—(1) Any person entitled to the discharge of a mortgage made to or vested in the Accountant or other officer, may leave with the Accountant the required discharge with a request that the same be executed.

(2) The Accountant shall thereupon certify as to the payment of the money secured by the mortgage, and the matter shall in such case be considered by the officers whose duty it is to sign and countersign cheques for payment of money out of Court, and if they find that the mortgage has been satisfied in full and that the proposed discharge is in due form they shall indorse upon such certificate and discharge a direction for the execution of the said discharge by the Accountant or other officer in whom the mortgage may be vested.

(3) Thereupon the Accountant or such other officer may execute such discharge and may on a receipt being given therefor, deliver up all deeds and documents relating to such mortgage in his hands and may assign any policy of insurance held by him as collateral security for such mortgage to the person entitled to such discharge or as he may by writing direct. C.R. 80. *Amended.*

722.—(1) Interest shall not be credited in any action or matter in respect of money paid into Court

- (a) With a defence;
- (b) As security for costs of an action or appeal;
- (c) As security for debt or costs, to stay execution;
- (d) As a deposit for sale in mortgage actions;
- (e) As a condition imposed by any injunction order;
- (f) As proceeds of sale in, or to abide the result of, interpleader proceedings; or
- (g) For any other merely temporary purpose.

unless or until after the same shall have been in Court for six months and then only at the rate of 2 per cent. per annum not compounded in any case; but the Finance Committee may for special reasons order that in any particular case interest shall be allowed on such moneys at any higher rate not exceeding 3 per cent. per annum.

(2) Interest shall be credited upon the Assurance fund at the rate of 2½ per cent. per annum.

(3) Interest shall be credited to suitors' accounts other than as above provided at the rate of $4\frac{1}{2}$ per cent. per annum until otherwise ordered by the Finance Committee. C.R. 56.

(4) Interest shall be credited upon money paid into Court only after the same has been in Court for fifteen days.

(5) Compound interest shall not be credited to any action or matter or allowed or paid to any suitor in respect of any fund which has not been in Court for at least five years. C.R. 57.

723.—(1) All sums less than \$10 standing to the credit of an adult and unclaimed for two years, shall be transferred to a Suspense account.

(2) All sums which are not claimed within ten years from the time when the same became payable out of Court, shall be transferred to the Suspense account.

(3) Money transferred to the Suspense account shall cease to bear interest, but shall at any time be paid to the person entitled. C.R. 58, *amended*.

724. Where money or securities in Court are to be paid out of Court or transferred to the legal personal representative of any person, the same may, upon proof to the satisfaction of the Accountant of the death of any of them whether before, on, or after the day of the date of the order, be paid to the survivors or survivor of them. C.R. 71.

725. Where money or securities in Court are to be paid out or transferred to any person named in the order or judgment, or named or to be named in any report, the same or any portion thereof for the time being remaining unpaid or untransferred, may, on proof to the satisfaction of the Accountant of the death of such person whether before, on, or after the date of the order or judgment and that his legal personal representatives are entitled thereto, be paid or transferred to such legal personal representatives or the survivors or survivor of them. C.R. 72.

726. Any person claiming to be interested in, or to have a lien or charge upon, or an assignment of, any money or securities in Court, or invested in the name of the Accountant or other officer of the Court, or any portion thereof, or claiming to have the same applied towards the satisfaction of any judgment or execution against the person to whose credit such moneys or securities stand, or for whose benefit the same are held by the said Accountant or other

officer, may, upon an affidavit verifying his claim, apply *ex parte* for an order directing that such money or securities shall not be paid out or dealt with except upon notice to him. C.R. 82.

727. Money to be paid into Court shall be paid into the Canadian Bank of Commerce at Toronto, or in some branch of it or into a chartered Bank being its agent in Ontario, and in no other way. C.R. 405.

728.—(1) The person paying money into Court shall obtain a direction to the Bank to receive the money.

(2) The person applying for a direction or cheque shall leave a *præcipe* therefor, and the judgment or order under which the money is payable, together with a copy thereof and of the report where necessary, which is to be on good paper of foolscap size, folded lengthwise, and is to be verified by an officer in the Accountant's office, and to be retained by the Accountant.

(3) If the direction is obtained elsewhere than in Toronto, these papers, with the necessary postage for their retransmission, shall be sent to the Accountant forthwith.

(4) The copy so verified shall be marked with a number corresponding with that of the account, and shall be bound and kept for reference in a book to be called the "Order Book."

(5) When money is required to be paid into Court to the credit of the Assurance Fund established under the Land Titles Act, the direction to receive the money, if the same is payable into a Bank in Toronto, shall be obtained from the Master of Titles, and if payable into a Bank outside of Toronto the direction shall be obtained from the proper Local Master of Titles. C.R. 406, 407 and 408.

729. The person paying money into Court shall be entitled to credit therefor as of the date on which the same was deposited in the Bank. C.R. 409.

730. The Bank, on receiving the money, shall give a receipt therefor in duplicate; and one copy shall be delivered to the party making the deposit, and the other shall be posted or delivered the same day to the Accountant. C.R. 410.

731.—(1) Money shall be paid out of Court upon the cheque of the Accountant, countersigned by an officer of the Court designated by the Finance Committee, and every cheque shall first be initialed by the Assistant Accountant or Chief Clerk. C.R. 412.

(2) The person entitled to a cheque shall produce and leave with the Accountant a *præcipe* therefor, together with the orders and reports entitling such person to the money. C.R. 416.

732. Where an order for payment of money out of Court is made otherwise than by a Judge of the Supreme Court, the Accountant before acting thereon shall apply to a Judge for his approval. C.R. 414.

(2) An order dispensing with the payment of money into Court unless it is made by a Judge of the Supreme Court shall not be acted on unless or until a Judge approves thereof.

(3) An order dispensing with payment of money into Court, or a certified copy thereof, shall be left with the Accountant forthwith after entry thereof. C.R. 417.

733.—(1) The Official Guardian shall deposit in the Accountant's Office a statement showing the distribution of the proceeds of lands sold or mortgaged with his approval under *The Devolution of Estates Act*, and proof of the dates of births of the infants interested.

(2) All money received by the Official Guardian on behalf of infants, lunatics, absentees, or other persons for whom he acts, shall, without order, be paid into Court to the credit of the person entitled.

(3) Money paid into Court under this rule to the credit of infants, shall be paid out to them when they attain their majority.

(4) Money paid into Court to the credit of non-concurring heirs and devisees shall be paid out to them upon application to the Accountant, without order.

(5) Money paid into Court to the credit of an absentee shall be paid out to him upon the fiat of a Judge, to be obtained upon proof of identity after notice to the Official Guardian. C.R. 972 and 1325.

734. When costs are directed to be paid out of money in Court, the Solicitor of the party entitled to receive the same shall be entitled to have the cheque drawn in his favor upon filing with the Accountant an affidavit stating:

(a) That he is entitled to receive such costs, and

(b) That he has not been paid his costs or any part thereof, and that the costs, payment of which is sought, are justly due to him.

If the Solicitor has been changed in the course of the litigation, that fact shall be shown in the affidavit, and the consent of both Solicitors shall be filed. C.R. 1314.

735. When money to which an infant or lunatic is entitled is paid into a Surrogate or County Court, the Registrar or Clerk of that Court shall forthwith cause the same to be transmitted to the Accountant with a statement showing when the money was so paid in, and a copy (certified by the Registrar or Clerk) of all judgments or orders affecting the same, and the money shall thereupon be placed to the credit of the said infant or lunatic. C.R. 1315, *amended*.

736. When money is paid into Court to the credit of an infant it shall be paid out of Court to him with accrued interest without further order upon his attaining his majority, unless otherwise ordered. C.R. 1316.

737.—(1) When money is in Court to the credit of an infant or lunatic it may be paid out upon the fiat of a Judge in Chambers without formal order.

(2) Such fiat shall be prepared by the Official Guardian and may be signed either by the Judge or the Clerk in Chambers, and shall be entered at length in the order book of the Clerk in Chambers, and the fiat or a copy to be verified by the Accountant shall be deposited with the Accountant, and no law stamp shall be required upon such fiat.

(3) The Judge may in his discretion fix and direct payment of the costs of the application to the Solicitor and disburse with the affidavit required by Rule 734.

(4) When an order has been made for payment of maintenance out of money in Court to which an infant is entitled the cheque shall, upon application to the Official Guardian, be obtained and forwarded by him without expense to the applicant, and no law stamp shall be required upon any such cheque. C.R. 1324.

CHAPTER XXIX.

PETITIONS OF RIGHT.

738. A petition of right shall be according to Form No. 125, and shall be signed by the suppliant, his counsel or solicitor. C.R. 922.

739. The petition shall be left with the Provincial Secretary, in order that the same may be submitted to the Lieutenant-Governor for his consideration, and in order that the Lieutenant-Governor, if he thinks fit, may grant his fiat that right be done; and no fee or sum of money shall be payable by the suppliant therefor. C.R. 923.

740. Where a fiat is granted a copy of the petition and fiat shall be left at the office of the Attorney-General, with an indorsement thereon, praying for an answer on behalf of His Majesty within 28 days. C.R. 924.

741. Where the petition is presented for the recovery of real or personal property, or any right in or to the same, which has been granted or disposed of by or on behalf of His Majesty or his predecessors, a copy of the petition and fiat shall be served upon or left at the last or usual or last known place of abode of the person in the possession, occupation or enjoyment of the property or right, indorsed with a notice according to Form No. 126. C.R. 925.

742. The person so served shall appear and file his defence to the petition, as required by such notice. C.R. 926.

743. The petition may be answered by statement of defence by or in the name of His Majesty's Attorney-General, on behalf of His Majesty, and by any other person who may be called upon as aforesaid, in the same manner as in an action. C.R. 928.

744. When no other provision is made and so far as the same are applicable, these Rules shall apply to petitions of right. C.R. 929.

745. In case of a failure on the behalf of His Majesty, or of any other person duly called upon, to defend in due time, at any stage of the proceedings, the suppliant may apply to the Court for an order that the petition may be taken as confessed; and the Court may order that such petition may be taken as confessed, as against His Majesty or other party so making default, and judgment may be given by the Court in favour of the suppliant. C.R. 930.

746. A petition of right shall be tried by a Judge without a jury. C.R. 931.

747. The judgment of the Court shall be that the suppliant is or is not entitled either to the whole or to some portion of the relief sought by his petition, or that such other relief may be given, and upon such terms and conditions (if any) as to the Court seem just. C.R. 932.

748. The costs of a petition of right shall be in the discretion of the Court or a Judge, and shall be recovered in the same way as in ordinary actions, save when costs are ordered to be paid by His Majesty. C.R. 934.

749. Upon any judgment or order for the payment of costs or damages by His Majesty, the Judge may, upon application in behalf of the party entitled after the lapse of 14 days from the making, giving or affirming of the judgment or order, certify to the Provincial Treasurer according to Form No. 127. C.R. 935.

750. Nothing in these Rules shall prevent a subject from proceeding by petition of right in any manner in which he might have proceeded before the 23rd day of April, 1887; nor shall anything in these Rules be construed as entitling a subject to proceed by petition of right in any case in which he would not be entitled so to proceed under the Acts passed by the Parliament of the United Kingdom before the said date. C.R. 936.

CHAPTER XXX.

OFFICERS AND OFFICES.

751. The Clerk of the Weekly Court at Toronto shall attend the Weekly Sittings at Toronto, settle and sign all orders and settle all judgments pronounced thereat. C.R. 32, 33 and 34.

752.—(1) Local Registrars shall, with respect to all matters in their offices, perform the same duties in the same manner as the like duties are performed in Central and Registrars' Offices at Toronto.

(2) When there is a Deputy Clerk of the Crown or Deputy Registrar he shall have the like powers and duties with reference to all matters in his office. C.R. 35.

753. Every Local Officer shall, within 10 days after the 31st day of March, the 30th day of June, the 30th day of September and the 31st day of December in each year, transmit to the Central Office, at Toronto, a return of all judgments which have been entered by him in the High Court of Justice during the three months ending on the above dates respectively; and a general index or list of such judgments shall be kept in the Central Office. A return shall be sent whether any judgments have been entered or not. C.R. 36.

754. The Clerk of the Process shall prepare and furnish to the officers requiring them, forms of writs and *præcipe* orders to be issued by them. C.R. 24.

755. Every Local Registrar, Local Master, Deputy Registrar and Deputy Clerk of the Crown, shall be a Local Taxing Officer. C.R. 84.

756. Every Local Taxing Officer shall, subject to the provisions of Rules 677 to 679 in actions begun or pending in his office be entitled to tax all bills of costs, including counsel fees, subject only to appeal to a Judge. This Rule shall not apply to cases in which infants are concerned, unless the Official Guardian is the guardian *ad litem* for the infants. C.R. 85.

757. All Taxing Officers shall, for the purpose of any taxation, have power to administer oaths and take evidence, direct production of books and documents, make certificates, and give general directions for the conduct of taxations before them. C.R. 86.

Business in Offices.

758. Except as provided in respect to Quieting Titles matters, no business shall be transacted in any of the offices of the Courts, either in procuring or issuing process, or in entering judgments or taking any proceeding whatever in a cause, unless upon the personal attendance of the party on whose behalf such business is required to be transacted, or of the counsel or solicitor of such party, or the clerk or agent of the solicitor, or the clerk of the agent. C.R. 11.

759. All officers shall be auxiliary to one another for promoting the correct, convenient, and speedy administration of business. C.R. 12.

760. In case of the absence or illness of any officer to whom any special duty is assigned, the duty may be performed by such other officer as may be designated for that purpose by the Chief Justice of Ontario. C.R. 13, *amended*.

761. Where the first document in a cause or matter is required to be filed in Toronto, the Central Office shall be deemed to be the office in which the cause or matter is commenced and in other cases the office of the Deputy Clerk of the Crown, Deputy or Local Registrar of the County or District in which such first document is required to be filed shall be deemed to be the office in which the cause or matter is commenced. C.R. 14.

762. All proceedings in a cause or matter shall be carried on in the office in which the cause or matter is commenced. C.R. 15, *amended*.

763. All persons called to the Bar of Ontario or admitted as Solicitors of the Supreme Court of Judicature for Ontario, shall sign the rolls provided upon taking the prescribed oaths. C.R. 87 and 88.

CHAPTER XXXI.

COUNTY AND LOCAL COURTS.

764. All writs in the County Courts shall be issued by the Clerk and shall be under the seal of the Court, and shall be tested in the name of the Judge thereof; or in the case of the death of such Judge, then in the name of the Junior or acting Judge for the time being. C.R. 1212.

765. The Judges of the County Courts shall have power to sit and act at any time for the transaction of any part of the business of such Courts, or for the discharge of any duty including the trial of non-jury actions. C.R. 1214.

766. Where the plaintiff fails to recover judgment in an action or other proceeding brought in a County or Division Court by reason of such Court having no jurisdiction over the subject matter thereof, the County Court, or the Judge presiding in the Division Court, as the case may be, shall have jurisdiction over the costs of such action, or proceeding, and may order by and to whom the same shall be paid. C.R. 1215.

767. In all actions brought in a County Court the Judge of the County Court where the proceedings were commenced, or the Master in Chambers, (subject to appeal in either case as if the case were in the High Court) may change the place of trial, and in the event of an order being obtained for that purpose, the Clerk of the County Court in which the action

was commenced shall forthwith transmit all papers in the action to the Clerk of the County Court to which the place of trial is changed, and all subsequent proceedings shall be entitled in such last mentioned Court, and carried on in such last mentioned County as if the proceedings had originally been commenced in such last mentioned Court. R.C. 1210.

768.—(1) These Rules, and the practice and procedure in actions in the Supreme Court shall, so far as the same can be applied, apply and extend to actions in the County Court. C.R. 1216.

(2) The Clerk of a County Court shall, subject to the direction of the Judge of that Court in actions in the County Court discharge all the duties and have all the power of the Master, Registrar, Judgment Clerk, Clerk of the Weekly Court and Clerk in Chambers in Supreme Court actions. *New.*

769.—(1) Money to be paid into the County Court or Surrogate Courts, shall be paid into some incorporated bank designated for that purpose, from time to time, by order of the Lieutenant-Governor in Council; or where there is no such bank, then into some incorporated bank in which public money of the Province is then being deposited, and which has been appointed for that purpose by any General Rule in that behalf; or if no bank has been appointed, into any bank in which public money of the Province is being deposited.

(2) The money shall be paid in to the credit of the cause or matter in which the payment is made, with the privy of the Clerk or Registrar (as the case may be) of the Court, and in no other manner; and such money shall be withdrawn only on the order of the Court or a Judge thereof, with the privy of the Clerk or Registrar of the Court.

(3) Where money is paid in under a plea of payment into Court, the Clerk, on the production of the receipt of the bank for the money or other satisfactory proof of such payment, shall sign a receipt for the amount in the margin of the pleading. C.R. 1221.

770. The Clerk of a County Court and Registrar of a Surrogate Court shall each keep a book, such containing an account of all money so paid into their respective Courts, and of the withdrawal thereof; and shall prepare in the month of January in every year a statement of all money so paid in and withdrawn, and a statement of the condition of the various accounts upon the thirty-first day of the preceding De-

cember, and shall transmit to the Provincial Secretary and to the Judge or each of the Judges of such Courts, a copy of such statement, with a declaration thereto annexed. Form No. 133. C.R. 1222.

771.—(1) The book so to be kept shall be open for inspection during office hours; and the Clerk or Registrar shall give a certificate of the state of an account or an extract therefrom at the request of any party interested or his solicitor on his paying to the Clerk or Registrar the sum of twenty cents for such inspection or certificate and the sum of ten cents per folio for such extract. C.R. 1223.

(2) The Official Guardian shall be entitled to make any such search without payment of any fee. *New.*

CHAPTER XXXII.

FORMS.

772.—(1) The forms contained in the Appendix hereto shall be used with such variations or modifications as circumstances may require; but any variance therefrom, not being in matter of substance, shall not affect their regularity.

(2) The provisions contained in the form prescribed shall be deemed to be authorized by these Rules. C.R. 1224, *amended.*

SCHEDULE

OF RULES AND ORDERS NOT REPEALED.

i. Rules respecting the Trial of Election Petitions (Ontario). 23 December, 1903.

ii. Rules for the Trial of Controverted Elections. 14 December, 1908. (17 O.L.R., Ap. II.)

This writ was served by X.Y. on C.D. [the defendant or one of the defendants], on _____, the _____ day of _____, 19____

This memorandum is made this _____ day of _____ 19____

(Signed) _____ X.Y.
Address. _____

No. 2.

Writ for service out of Ontario. (Not Specially Endorsed.)

In the Supreme Court of Ontario.

Between A.B., Plaintiff,
and
C.D. and E.F., Defendants.

Name and title of Sovereign, *e.g.*, George the fifth, by the grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions Beyond the Seas, King, Defender of the Faith, Emperor of India.

To C.D., of

We command you, C.D., that within [here insert the number of days directed by the order allowing service] after the service, on you, of this writ [or notice of this writ as the case may be], and of the plaintiff's statement of claim delivered herewith, inclusive of the day of such service, you cause an appearance to be entered for you in this action, and your defence thereto, if any, to be delivered within 10 days thereafter; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence on the plaintiff's own shewing and you may be deemed to have admitted the plaintiff's claim and (subject to Rules of Court) will not be entitled to notice of any further proceedings herein.

Witness, the Honourable _____ Chief Justice of Ontario at
in the year of Our Lord, 19____

(Signature of Officer.)

Additional Indorsement to be made on the writ.

N.B.—This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of Ontario. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ, and not the writ itself, is to be served upon him.

No. 3.

Notice of writ, in lieu of writ, to be given out of Ontario.

In the Supreme Court of Ontario.

Between A.B., Plaintiff,
and
C.D. and E.F., Defendants.

To G.H., of

Take notice that A. B., of _____ has commenced an action against you, G.H., in His Majesty's Supreme Court of Ontario, by writ of that Court, dated the _____ day of _____, A.D. 19____; which writ is indorsed as follows [copy in full the

indorsements), [and you are required within days after the receipt of this notice and of the plaintiff's statement of claim, to be served herewith, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action, and your defence thereto, if any, to be delivered within 10 days thereafter;] and in default of your so doing, the said A.B. may proceed therein, and judgment may be given in your absence on the plaintiff's own shewing and you may be deemed to have admitted the plaintiff's claim and (subject to Rules of Court) will not be entitled to notice of any further proceedings therein.

Appearance may be entered at the office at

Dated, &c.

X.Y., of &c.
Solicitor for A.B.

N.B.—This notice is to be used when the person to be served is not a British subject, and is not in British dominions.

Indorsement to be made on the notice of the writ after service thereof:

This notice was served by X. Y., on G. H., (the defendant or one of the defendants) on the day of 19

This memorandum is made on the day of 19

*Where the writ is specially indorsed omit the words in brackets and substitute:

"And you are required within days after the service of this notice on you, inclusive of the day of such notice, if you desire to defend the said action, to cause an appearance to be entered for you therein and further within the same time to file an affidavit in the office in which your appearance is to be entered, shewing the nature of your offence (if any) to the plaintiff's claim, and to forthwith serve a copy upon the Plaintiff's Solicitor.

NO. 4 *Indorsements on Writs of Summons.*

Money Claims (where writ is not specially Indorsed.)

The plaintiff's claim is \$ for the price of goods sold.

The plaintiff's claim is \$ for money lent [and interest].

The plaintiff's claim is \$ whereof \$ is for the price of goods sold, and \$ for money lent, and \$ for interest.

The plaintiff's claim is \$ for arrears of rent.

The plaintiff's claim is \$ for arrears of salary as a clerk [or as the case may be].

The plaintiff's claim is \$ for interest upon money lent.

The plaintiff's claim is \$ for penalties under the Statute R.S.O. Ch.

The plaintiff's claim is \$ for fees for work done [and \$ money expended] as a solicitor.

- The plaintiff's claim is \$ for commission as [*state character as auctioneer, broker, &c.*]
- The plaintiff's claim is \$ for medical attendance.
- The plaintiff's claim is \$ for the warehousing of goods.
- The plaintiff's claim is \$ for the use and occupation of a house.
- The plaintiff's claim is \$ for work done.
- The plaintiff's claim is \$ for board and lodging.
- The plaintiff's claim is \$ for money received by the defendant as agent of the plaintiff.
- The plaintiff's claim is \$ for a return of money obtained from the plaintiff by fraud.
- The plaintiff's claim is \$ for a contribution in respect of money paid by the plaintiff as surety.
- The plaintiff's claim is \$ upon a policy of insurance upon the life of X. Y., deceased.
- The plaintiff's claim is \$ upon a bond to secure payment of \$1,000 and interest.
- The plaintiff's claim is \$ upon a bill of exchange accepted [*or drawn or indorsed*] by the defendant.
- The plaintiff's claim is \$ upon a promissory note made [*or indorsed*] by the defendant.
- The plaintiff's claim is \$ against the defendant A.B., as acceptor, and against the defendant C.D. as drawer [*or indorser*], of a bill of exchange.
- The plaintiff's claim is \$ for calls upon shares.

Claims for Damages and other Relief.

- The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.
- The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and \$ for arrears of wages].
- The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.
- The plaintiff's claim is for damages for breach of duty as factor [*or, &c.*] of the plaintiff [and \$ for money received as factor, &c.]
- The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X. Y. to the defendant [*or plaintiff*].
- The plaintiff's claim is for damages for non-compliance with the award of X. Y.
- The plaintiff's claim is for damages for assault [and false imprisonment, and for malicious prosecution].
- The plaintiff's claim is for damages by reason the defendant's negligence as solicitor of the plaintiff.
- The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same].

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same].

The plaintiff's claim is for damages for negligence in the custody of furniture lent on hire [or a carriage lent], [and for wrongfully, &c.].

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c., being, &c.

The plaintiff's claim is for damages for libel. The libel complained of was published [give date and manner of publication].

The plaintiff's claim is for damages for slander. The slander complained of was the speaking of the words [quote them] on the day of

The plaintiff's claim is to recover possession of goods wrongfully distrained, being, &c.

The plaintiff's claim is for damages for improperly distraining.

The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [or a business, or shares, or &c.].

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of A. B.

The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture.

The plaintiff's claim is for damages for breaches of covenants contained in the lease of a farm.

The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.

The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.

The plaintiff's claim is as executor of A. B. deceased, for damages for the death of the said A. B., from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.

The plaintiff's claim is for damages for breach of promise of marriage.

The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.

The plaintiff's claim is for damages for breach of contract to accept and pay for goods.

The plaintiff's claim is for damages for breach of warranty of a horse.

The plaintiff's claim is for damages for the infringement of the plaintiff's patent.

The plaintiff's claim is for dower out of lot number (or describing the property otherwise with reasonable certainty). And take notice that the plaintiff claims damages for the detention of her dower from the day of

The plaintiff's claim is to recover possession of a house, No. _____ in _____ street, in the City of Ottawa; or of the N. E. $\frac{1}{4}$ of lot 2, in the 3rd concession of the township of _____ in the county of _____. And for mesne profits. And for and account of rents or arrears of rent.

If an injunction is claimed.

The plaintiff's claim is for an injunction to restrain the defendant from _____

Claims to equitable relief.

The plaintiff's claim is as creditor of X. Y., of _____ deceased, to have the [real and] personal estate of the said X. Y., administered. The defendant C. D., is sued as the administrator (or executor) of the said X. Y. [and the defendants E. F. and G. H. as his co-heirs-at-law].

The plaintiff's claim is as a legatee under the will dated the day of _____ 18____ of X. Y. deceased, to have the [real and] personal estate of the said X. Y. administered. The defendant C. D. is sued as the executor of the said X. Y. [and the defendants E. F. and G. H. as his devisees].

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership dated the _____ day of _____], and to have the affairs of the partnership wound up.

The plaintiff's claim is to have the trusts of an indenture dated _____ and made between _____, carried into execution.

The plaintiff's claim is to have a deed dated _____ and made between [parties], set aside or rectified.

The plaintiff's claim is for specific performance of an agreement dated the _____ day of _____, for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at _____

The plaintiff's claim is for alimony; and the plaintiff demands as interim alimony until the trial of the action the monthly (or weekly) sum of \$ _____ to be paid to her on the _____ day of each month (or week) at _____ and the interim costs to which she is entitled by the practice in that behalf.

NOTE.—Where the plaintiff desires to register a certificate of lis pendens the indorsement on the writ of summons may contain such short description of the property as may be necessary or proper for that purpose.

Claims in Mortgage Action.

(a) *By Mortgagee for sale and for immediate payment and possession.*

The plaintiff's claim is on a mortgage dated the _____ day of _____ made between _____ [or by deposit of title deeds], and that the mortgage may be enforced by sale, [where desired add and payment to the plaintiff by the defendant personally of any balance]

If immediate payment is desired add. And to recover from you the defendant (naming the defendant against whom the relief is claimed) payment of the amount due under a covenant by [you] in that behalf contained in said mortgage (or as the case may be).

(If immediate possession is desired add), And to recover immediate possession of the mortgaged premises

And take notice that the plaintiff claims that there is now due by you for principal money the sum of \$ [If so add and for taxes (or premiums of insurance or other matters) the sum of \$] and for interest the sum of \$ and that you are liable to be charged with these sums with subsequent interest to be computed at the rate of per centum per annum and costs in and by the judgment to be drawn up, and that in default of payment thereof within six calendar months from the time of drawing up the judgment your interest in the property may be sold, unless before the time allowed you for appearance you file in the office within named a memorandum in writing entitled in this action and signed by yourself or your solicitor to the following effect: "I dispute the amount claimed by the plaintiff in this action," in which case you will be entitled to four days' notice of the taking of the account of the amount due to the plaintiff.

The following is a description of the mortgaged premises: (Set out description sufficient for registration).

(b) *By Mortgage for foreclosure and for immediate payment and possession.*

The plaintiff's claim is on a mortgage dated the day of made between [or by deposit of title deeds], and that the mortgage may be enforced by foreclosure.

If immediate payment is desired add, And to recover from you the defendant, (naming the defendant against whom the relief is claimed) payment of the amount due under a covenant by [you] in that behalf contained in said mortgage (or as the case may be).

If order for immediate possession is desired add, And take notice further that the plaintiff claims to be entitled to recover immediate possession of the mortgaged premises.

And take notice that the Plaintiff claims that there is now due by you for principal money the sum of \$ [If so add and for taxes (or premiums of insurance or other matters) the sum of \$] and for interest the sum of \$ and that you are liable to be charged with these sums and subsequent interest to be computed at the rate of per centum per annum and costs, in and by the judgment to be drawn up, and that in default of payment thereof within six calendar months from the time of drawing up the judgment your interest in the property may be foreclosed unless before the time allowed you for appearance you file in the office within named a memorandum in writing entitled in this action and signed by yourself or your solicitor to the following effect:—"I dispute the amount claimed by the plaintiff in this action" in which case you will be entitled to four days' notice of the taking of the account of the amount due to the Plaintiff.

If you desire a sale of the mortgaged premises instead of a foreclosure, and do not intend to defend the action, you must within the time allowed for appearance, file in the office within named, a memorandum in writing entitled in this action and signed by yourself or your solicitor, to the following effect:—"I desire a sale of the mortgaged premises in the plaintiff's writ of summons mentioned, or a competent part thereof, instead of a foreclosure," and you must deposit in the Court to the credit of this action the sum of \$80 to meet the expenses of such sale and attach to the said memorandum a certificate of the Accountant of the Supreme Court to the effect that such deposit of \$80 has been made.

"The following is a description of the mortgaged premises:" (Set out description sufficient for registration).

(c) *By Mortgagor for Redemption.*

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated _____ and made between [parties], and to redeem the property comprised therein.

Indorsements of Character of Parties. (To be introduced into the Indorsement of the Cause of Action.)

The plaintiff's claim is as executor [or administrator] of C.D., deceased, for, &c.

The plaintiff's claim is against the defendant A.B., as executor [or, &c.] of C.D., deceased, for, &c.

The plaintiff's claim is against the defendant A.B., as executor of X.Y., deceased, and against the defendant C.D., in his personal capacity, for, &c.

The claim of the plaintiff is against the defendant as executrix of C.D., deceased, for

The plaintiff claim is as assignee in insolvency of A.B., for

The plaintiff's claim is against the defendant as assignee in insolvency of A.B., for

The plaintiff's claim is as [or the plaintiff's claim is against the defendant as] trustee under the will of A.B. [or under the settlement upon the marriage of A.B. and X.Y., his wife].

The plaintiff's claim is against the defendant as heir-at-law of A.B., deceased.

The plaintiff's claim is against the defendant C.D., as heir-at-law, and against the defendant E.F., as devisee of lands under the will of A.B.

The plaintiff's claim is as well for the King as for himself, for

No. 5.

Specially Indorsed Writ.

In the Supreme Court of Ontario.

Between A.B., Plaintiff,
and
C.D. and E.F., Defendants.

Name and title of Sovereign, e.g., George the fifth, by the grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions Beyond the Seas, King, Defender of the Faith, Emperor of India.

To C.D., of the City of _____, in the County of _____
We command you that within ten days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in this action and WITHIN THE SAME TIME THAT YOU DO FILE AN AFFIDAVIT IN THE OFFICE IN WHICH YOUR APPEARANCE IS TO BE ENTERED, SHOWING THE NATURE OF YOUR DEFENCE (if any) TO THE PLAINTIFF'S CLAIM. AND THAT YOU DO FORTHWITH THEREAFTER SERVE A COPY OF SUCH AFFIDAVIT UPON THE PLAINTIFF'S SOLICITOR.

And take notice that in default of your so doing, the plaintiff may sign judgment for the relief claimed as indorsed on this writ, and execution will at once issue thereon.

Witness, the Honourable Chief Justice of Ontario at _____ in
the year of Our Lord 19 _____

(Signature of officer.)

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within 12 calendar months from the date thereof, or if renewed, within 12 calendar months from the date of such renewal, including the day of such date, and not afterwards.

Appearance may be entered at the _____ office at

To be inserted in the margin.

Issued from the Central Office, Toronto, (or from the office of the Deputy Clerk of the Crown, or Deputy or Local Registrar, in the county of _____.)

(Signature of officer.)

Indorsement to be made on the writ.

The plaintiff's claim is for, &c. (as in Form No. 4, or as may be)

This writ was issued by E.F., of _____ solicitor for the said plaintiff who resides at _____ [or, this writ was issued by the plaintiff in person] who resides at _____ [Mention the city, town or township, and also the name of the street and number of the house of the plaintiff's residence, if any, or in case of a township the number of the lot and concession.]

Indorsement to be made on the writ within three days after service thereof.

This writ was served by X. Y. on C. D. [the defendant or one of the defendants], on _____, the _____ day of _____, 19 _____

This memorandum is made this _____ day of _____ 19 _____

(Signed) _____ X.Y.
Address.

NOTE.—When service is intended to be made out of Ontario, make similar modifications in Form No. 2.

The Claim shall be indorsed in accordance with the following:

Money Claims—

1. The plaintiff's claim is for money received by the defendant for the use of the plaintiff. The following are the particulars:—

—2nd January, 19 _____—

To amount of rents on No. 5 Smith Street, collected by defn't.	\$300
To deposit on intended sale of Blythe Cottage	400
Amount due	\$700

Place of trial, Toronto.

Following the indorsement there shall be this Warning to Defendant:

This writ being specially indorsed, the defendant is warned that in addition to entering appearance within the time limited, he must, within the same time file an affidavit showing the nature of his defence to the plaintiff's claim, and forthwith thereafter, serve a copy upon the plaintiff's solicitor, and that in default judgment will be entered and execution issued.

Upon appearance being entered and such affidavit being filed the plaintiff may elect to proceed to trial without pleadings.

If you pay the amount of the plaintiff's claim within the time limited for appearance further proceedings will be stayed. If you deem the amount claimed for costs excessive you may have them taxed.

2. The plaintiff's claim is for the price of goods sold. The following are the particulars:—

18.—31st December.—	
Balance of account for butcher's meat to this date.....	\$142
18.—1st January to 31st March.—	
Butcher's meat supplied	297
	<hr/>
	\$439
18.—1st February.—Paid	180
	<hr/>
Balance due	\$259

Place of trial, Toronto.

(Warning as above.)

3. The plaintiff's claim is against the defendant *A.B.* as principal, and against the defendant *C. D.* as surety, for the price of goods sold to *A.B.* The following are the particulars:—

18.—2nd February. Guarantee by *C.D.* of the price of woollen goods to be supplied to *A.B.*

2nd February—To goods	\$225
3rd March—To goods	151
17th March—To goods	27
5th April—To goods	65
	<hr/>
	\$468

Place of trial, Ottawa.

(Warning as above.)

4. The plaintiff's claim is against the defendant, as maker of a promissory note. The following are the particulars:—

Promissory note for \$1,000 dated 1st January 18, made by defendant payable 4 months after date.

Principal	\$1,000
Interest	
Notarial charges	

Place of trial, London.

(Warning as above.)

5. The plaintiff's claim is against the defendant *A.B.* as acceptor, and against the defendant *C.D.* as drawer of a bill of exchange. The following are the particulars:—

Bill of exchange for \$2,000, dated 1st January, 18, drawn by defendant *C.D.* upon and accepted by defendant *A.B.*, payable 3 months after date.

Principal	\$2,000
Interest	
Notarial charges	

Place of trial, Hamilton.

(Warning as above.)

6. The plaintiff's claim is for principal and interest due upon a bond. The following are the particulars:—

Bond dated 1st January, 18 Conditions for payment of \$500
on the 26th December, 18

Principal due\$500
Interest

Place of trial, Belleville.

(Warning as above.)

7. The plaintiff's claim is for principal and interest due under a covenant. The following are the particulars:—

Deed dated covenant to pay \$3,000 and interest.

Principal due\$800
Interest

Place of trial, Kingston.

(Warning as above.)

8. The plaintiff's claim is to recover possession of a farm and premises called lot No. 1 in the 5th Con. of the Tp. of in the County of which was let to the defendant by the plaintiff for the term of 3 years from the 29th day of Sept. 18 , which term has expired (or as tenant from year to year from the 29th day of Sept. 18 , which said tenancy became duly determined by notice to quit on the 29th day of Sept., 18)

The plaintiff also claim \$ for mesne profits.

Place of trial, Lindsay.

(Warning as above.)

9. The plaintiff's claim is to recover possession of (or for the return of [a certain stallion named "Disturbance," or as the case may be], unlawfully detained by the defendant, of which the plaintiff is [the owner and lawfully entitled to the possession.

Place of trial, Toronto.

(Warning as above.)

10. In mortgage actions use the forms provided *ante* and add the "warning."

NOTE.—All the following forms are to be preceded by the Court and style of cause or title. See Rule 190.

No. 6.

Appearance.

Enter an appearance for (giving the names of all the defendants for whom appearance is to be entered) in this action.

Dated the day of 18
(Signed)
(Address)

If conditional appearance allowed, add: The defendant by order of day of 190 , is permitted to appear without prejudice to his right to dispute the jurisdiction of the Court in this action or as the case may be).

In case the defendant wishes to dispute the amount claimed, and to make no other defence, add, The defendant disputes the amount claimed by the plaintiff, (or the defendant insists that the amount due to the plaintiff is \$ only, or the defendant insists that the amount due to the plaintiff is, \$ for principal and \$ for interest, since the day of etc., and no more,) as the case may be.

In action for land limiting Defence, add, The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to etc.

Appearance to 3rd party notice.

Enter an appearance for to the third party notice
issued in this action on the day of 18 , by the
defendant.

Dated the day of 18 .

(Signed)
(Address).

No. 7.

Notice of Entry of Appearance.

Take notice, that have this day entered an appearance at
for the defendant to the writ of summons in this
action. [Where the appearance is conditional or without prejudice
to the def't's. right to dispute the jurisdiction of the Court, it
should be so stated].

Dated the day of 18 .

(Signed)
Solicitor for the defendant.

No. 8.

Notice disputing amount.

Take notice, that the defendant disputes the amount claimed by
the plaintiff (or the defendant insists that the amount due to the
plaintiff is \$ only; or the defendant insists that the amount due
to the plaintiff is \$ for principal and \$ for interest,
since the day of &c., and no more, as the case may
be).

Dated, &c.

(Signed)

Solicitor for the defendant.

No. 9.

Notice Limiting Defence.

The defendant, C.D., limits his defence to part only of the
property mentioned in the writ in this action, that is to say, to
the north-west quarter of the lot.

No. 10.

PLEADINGS.

Statement of Claim.

1. (*Set out concisely in convenient paragraphs a statement of the material facts relied upon.*)

2. The plaintiff claims \$

3. The plaintiff proposes that this action should be tried at Whitby.

Delivered the day of 18, by
X. Y., of Plaintiff's Solicitor.

No. 11.

Statement of Defence.

1. The defendant admits the allegations in the and para-
graphs of the plaintiff's statement of claim.

2. (*Set out concisely in convenient paragraphs a statement of the material facts relied upon.*)

Delivered, etc.

No. 12.

Reply.

1. (*If desired*) the plaintiff joins issue upon the defendants statement of defence.

2. (*Where plaintiff does not introduce into his statement of claim, originally or by way of amendment, the allegations necessary by way of reply to the defence.*)

(*Set out concisely in convenient paragraphs the material facts relied upon in reply.*)

Delivered, etc.

No. 13.

Statement of Defence and Counter-claim.

The defence and counter-claim of the above-named C. D.

1. (*Set out as in Form No. 11 the material facts relied on by way of defence.*)

2. By way of counter-claim the defendant says: (*Set out by reference to paragraphs of defence, or, as in the case of a statement, of claim the material facts relied on by way of counter-claim.*)

3. The defendant claims (*as in a statement of claim.*)

Delivered, etc.

NOTE.—*Where a third person as well as the plaintiff is made a party to a counter-claim add a second style of cause, thus:*

And between C. D., Plaintiff,
and
A. B. and E. F., Defendants.
(By counter-claim.)

No. 14.

Reply to Defence and Counter-claim.

(Where plaintiff does not introduce into his statement of claim, originally or by amendment, the allegations necessary by way of reply to the defence:)

(Set out the material facts relied on by way of reply.) A joinder of issue on the defence or paragraphs thereof may be added.

Delivered, etc.

No. 15.

Special Case.

The following case is stated for the opinion of the Court under an order of the Honourable Mr. Justice _____ dated the _____ day of _____ 18____, made pursuant to Rule _____ (or as the case may be. (Here state the material facts of the case bearing upon the question of law to be decided.)

The question (or questions) for the opinion of the Court is (or are)

First—Whether, etc.

Second—Whether, etc.

(Signatures.)

No. 16.

Certificate of Service of Foreign Process.

I, _____, Clerk of the Supreme Court of Ontario, hereby certify that the documents annexed hereto are as follows:—

(1) The original letter of request for service of process received from the Court of Tribunal at _____ in the _____ of _____ in the matter of _____ versus _____, and _____

(2) The process received with such letter of request, and _____

(3) The evidence of service upon the person named in such letter of request duly sworn to before and verified by a Notary Public, duly appointed for Ontario under his hand and official seal.

And I certify that such service, so proved, and the proof thereof are such as are required by the law and practice of the Supreme Court of Ontario, regulating the service of legal process in Ontario, and the proof thereof.

And I certify that the cost of effecting such service amounts to the sum of \$ _____.

Dated this _____ day of _____ 191____.

No. 17.

General Form of Affidavits.

I, E. F. of (place of residence and description or addition) make oath and say as follows:—

Or, We E. F. and G. H. of, etc., severally make oath and say as follows:—

1.

2.

3. *If necessary*, And I, the said E. F., for myself say
etc.

Sworn [if there be more than one deponent by the said naming
each deponent] before me at the _____ of _____
in the County of _____
this _____ day of _____ A.D.

A Commissioner for taking affidavits in and for the County of _____

An affidavit for use on a motion should by endorsement on
whose behalf it is filed; e.g., "Affidavit of John Smith filed on be-
half of the plaintiff."

No. 18.

Form or Jurat in the case of an illiterate person.

Sworn before me at the _____ of _____ in the County
of _____ this _____ day of _____ A.D., the said
affidavit having been first read over in my presence to the deponent
(or the deponent E. F.) who seemed perfectly to understand the
same and signed the same (or made his mark thereto) in my pre-
sence.

A Commissioner, etc.

No. 19.

Affidavit of Service of Writ of Summons.

I, _____ of _____ make oath and say
as follows:—

(1) I did on the _____ day of _____ 18____, personally serve
C. D., the above-named defendant in this action with a true copy of
the writ of summons (or notice of the writ of summons) herein
hereto annexed, by delivering the same to and leaving the same
with the said defendant on the last day aforesaid at _____ in the
county of _____

(2) Upon the said copy so served as aforesaid was indorsed at
the time of such service true copies of all the indorsements ap-
pearing upon the said original writ of summons (or notice) except
the indorsement hereinafter mentioned.

(3) To effect such service I necessarily travelled
_____ miles.

(4) Subsequently, namely upon the _____ day of _____
I did indorse upon the said original writ of summons (or notice)
the day of the month and week of such service.

Sworn, &c.

No. 20.

Affidavit as to Documents.

I, the above-named defendant C. D., make oath and say as fol-
lows:—

1. I have in my possession or power the documents relating to
the matters in question in this action set forth in the first and
second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. [*Here state upon what grounds the objection is made, and verify the facts as far as may be.*]

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last mentioned documents were last in my possession or power on (*state when*).

6. [*Here state what has become of the last mentioned documents, and in whose possession they now are.*]

7. According to the best of my knowledge, information and belief, I have not now, and never had in my possession, custody or power, or in the possession, custody or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this action or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto, and the pleadings and other proceedings in the action.

Sworn, &c.

No. 21.

Affidavit on production when made by an officer of a Corporation.

I, of , make oath and say as follows:—

1. I am the (*here state the name of the office held by the deponent in the service of the Company on whose behalf he makes the affidavit*), and as such, have knowledge of all documents which are, or have been, in the custody or possession of the said (company), relating to the matters in question in this action.

2. I am cognizant of the matters in question in this action.

3. The said defendants have in their possession or power, the documents relating to the matters in question in this action, set forth in the first and second parts of the first schedule hereto.

4. The said defendants object to produce the said documents set forth in the second part of the said first schedule hereto.

5. (*Here state on what grounds the objection is made, and verify the facts as far as may be*).

6. The said defendants have had, but have not now, in their possession or power, the documents relating to the matters in question in this action, set forth in the second schedule hereto.

7. The last mentioned documents were last in the possession or power of the said defendants on (*state when*).

8. (*Here state what has become of the last mentioned documents, and in whose possession they now are*).

9. According to the best of my knowledge, information and belief, the said defendants have not now, and never had, in their possession, custody, or power, or in the possession, custody, or power of myself, or of any of its solicitors or agents, or of any person or persons whomsoever, on its behalf any (*proceed as in last form*).

Sworn, &c.

No. 22.

Præcipes.

NOTE.—A præcipe for the action of any officer should contain a concise statement of what is desired and where what is sought is authorized by an order it should be referred to in the præcipe and should be produced. All particulars, save those appearing in the order, necessary for the officer's action should be given.

The following are given as examples.

Required in pursuance of order dated _____ to renew the writ of summons in this action,

Dated the _____ day of _____ 18 .

(Signed)

Solicitor for the

Required in pursuance of order dated _____ a writ of habeas corpus ad testificandum directed to the _____ to bring before _____

Required in pursuance of order [*or* Master's certificate] dated _____ a commission to examine witnesses directed to _____

Required a writ of fieri facias directed to the sheriff of _____ to levy against *C. D.* the sum of \$ _____ and interest thereon at the rate of % per centum per annum from the _____ day of _____ [and \$ _____ costs] to

Judgment [*or* order] dated _____ day of _____
Taxing master's certificate, dated _____ day of _____

Set down this appeal from the order [*or* judgment] of _____ in the action dated the _____ day of _____, 18 .

Required a writ of venditioni exponas directed to the sheriff of _____ to sell the goods and chattels (*or* lands and tenements) of *C.D.*, taken under a writ of fieri facias in this action tested _____ day of _____

Enter (*or* set down) this action for trial at the sittings at _____ commencing on _____

NOTE.—A præcipe to set down for argument may be indorsed on the notice of motion.

No. 24.

Third Party Notice.

To X. Y. of the _____ of _____

Take notice that this action has been brought by the plaintiff against the defendant (as surety for *M.N.* upon a bond conditioned for payment of \$2,000 and interest to the plaintiff.

The defendant *C.D.* claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are his co-surety under the said bond, or, also surety for the said *M.N.*, in respect of the said matter, under another bond made by you in favor of the said plaintiff, dated the _____ day of _____ A.D., .)

Or [as acceptor of a bill of exchange for \$500, dated the _____ day of _____ A.D. drawn by you upon and accepted by the defendant, *C.D.* and payable three months after date.

The defendant *C. D.*, claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation].

Or [To recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,900 tons of coal.

The defendant *C. D.*, claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.]

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant *C. D.*, or your liability to the defendant *C. D.*, you must cause an appearance to be entered for you within ten days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained against the defendant *C. D.*, and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you.

(Signed) *C.D.*

(or *X. Y.*, Solicitor for the defendant, *C. D.*)

Issued from the _____ office of the Supreme Court
at _____, where appearance may be entered.

Date _____ Signature of Officer.

No. 25.

Summons to Defendant added by Counter-claim.

(Court and Cause.)
George the Fifth, &c.
To *X. Y.* of, &c.

Whereas in this action the defendant has filed a counter-claim against the plaintiff and upon the said *X. Y.*

We command you that within ten days after service upon you of this summons and of the statement of claim and statement of defence and counter-claim to be served herewith you do cause an appearance to be entered for you and your defence, if any, to the said counter-claim to be delivered, and take notice that in default of your so doing the plaintiff by counter-claim may proceed thereon without further notice to you and will be deemed to admit the statements of the said counter-claim and judgment will be given accordingly.

Your appearance may be entered and defence filed at

Witness, &c.

Issued, &c.

NOTICES.

No. 26.

Notice of payment into Court.

Take notice that the defendant has paid into Court \$ _____ in satisfaction of the plaintiff's claim [or the plaintiff's claim for, &c.]

No. 27.

Acceptance of sum paid into Court.

Take notice that the plaintiff accepts the sum of \$ _____ paid by you into Court in satisfaction of his claim herein (or of his claim for, &c.)

No. 28.

Confession of Defence arising pending action.

The plaintiff confesses the defence stated in the _____ paragraph of the defendant's statement of defence [or, of the defendant's further statement of defence].

No. 29.

Confession of Action for Recovery of Land.

I, the defendant C.D., hereby confess this action (or, confesses this action as to part of the land claimed, namely: *describe the part*).

No. 30.

Notice of Discontinuance.

Take notice, that the plaintiff hereby wholly discontinues this action (or withdraws so much of his claim in this action as relates to, &c.)

(If not against all the defendants add as against the defendant C. D.)

No. 31.

Notice to Produce Documents referred to in pleadings of applicant.

Take notice that the [plaintiff or defendant], requires you to produce for his inspection the following documents referred to in your [statement of claim or defence of affidavit the _____ day of _____ A.D.]

No. 32.

Notice to inspect Documents.

Take notice that you can inspect the documents mentioned in your notice of the _____ day of _____ A.D. [except the deed numbered _____ in that notice] at my office, on _____ day next the _____ instant, between the hours of 12 and 4 o'clock.

Or, that the [plaintiff or defendant] objects to giving you inspection of the documents mentioned in your notice of the _____ day of _____ A.D. on the ground [state the ground]:—

No. 33.

Jury Notice.

"The Plaintiff (or one or more of them or the Defendant, or one or more of them as the case may be) requires that the issues in this cause be tried (or the damages in this cause be assessed) by a jury."

No. 34.

Notice of Trial (General).

Take notice of trial of this action [or the issues in this action ordered to be tried] at _____ for the _____ day of _____ next

No. 35.

Notice of Trial (Toronto non-jury sittings).

Take notice that this action [or the issues in this action ordered to be tried] was [or were] set down on the _____ day of _____ 18 , for trial at the Toronto non-jury sittings.

No. 36.

**Notice of Motion to Court.*

Take notice, that the Court will be moved on behalf of the at Osgoode Hall, Toronto, (or as may be) on _____ day the _____ day of _____ 18 . at _____ o'clock in the forenoon, or so soon thereafter as counsel can be heard, for an order that (state the object of the intended application) or for such other order as may seem just. [In cases where it is necessary to set out the grounds of the motion, add upon the following grounds, stating them concisely].

And take notice that in support of such motion will be read (state the affidavits or other evidence to be used).

Dated the _____ day of _____ 18 .

(Signed)

Solicitor for the

To
Solicitor for

Con. Rules, Form 10.

No. 37.

Notice of Motion in Chambers.

Take notice that a motion will be made on behalf of before the presiding Judge in Chambers (or the Master in Chambers, or as the case may be) at Osgoode Hall, in the City of Toronto, (or as the case may be) on _____ day the _____ day of _____ , 18 , at _____ o'clock in the _____ noon, or so soon thereafter as the motion can be heard, for an order for (state object of applications).

And take notice, &c. (as in preceding form.)

No. 38.

Notice to produce (General Form).

Take notice that you are hereby required to produce and shew to the Court on the trial of this action all books, papers, letters, copies of letters, and other writings and documents in your custody, possession or power, containing any entry, memorandum, or minute relating to the matters in question in this action, and particularly the following:—(*Setting them out.*)

Dated, &c.

Description of document.

Date.

No. 39.

Notice to admit Documents.

Take notice that the plaintiff [*or defendant*] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or plaintiff*] his solicitor or agent at _____, on _____, between the hours of _____; and the defendant [*or plaintiff*] is hereby required, within 4 days from the said day, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies, and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

No. 40.

Indorsement on Order adding or changing parties.

Take notice that if you desire to discharge this order you must apply to the Court for that purpose within ten days after the service hereof upon you. The statement of claim in this action is filed in the office of the _____ at _____ (*and if the service is after a judgment directing a reference to a Master or other officer, add*) and the reference under the judgment in this cause is being prosecuted in the office of the _____ at _____

(Signed) A.B.
Plaintiff's Solicitor.

No. 41.

Indorsement on office copy of judgment or order.

To _____, (*the person upon whom service is to be made.*)

Take notice, **FIRST**, that from the time of service of this notice you will be bound by the proceedings in this cause in the same manner as if you had been originally made a party, unless you within ten days after the service hereof apply to the Court to add to, vary or set aside the within judgment. And **SECONDLY**, that you may upon service of notice upon the plaintiff attend the proceedings under the within judgment.

No. 42.

Indorsement on the copy served of an order adding a party.

To A.B., (the person upon whom service has been directed).

If you wish to apply to discharge the within order or to add to, vary, or set aside, the judgment in this cause, you must do so within ten days from the service thereof. (When the order fixes a time for the further proceedings, add.) And if you fail to move to discharge the said order or to add to, vary, or set aside the judgment, and fail to attend at the time and place appointed by said order, either in person or by your solicitor, such order will be made and proceedings taken, in your absence, as may seem just and expedient; and without any further notice you will be bound by the judgment, and the further proceedings in the cause, in the same manner as if you had been originally made a party.

No. 43.

Notice to Incumbrancers.

Whereas an action has been instituted by the above named plaintiff for the foreclosure (or sale) of (or enforcement of a lien on) certain lands, (insert description of lands) and I have been directed by the judgment made in this cause, and dated the _____ day of _____, to inquire whether any person, other than the plaintiff has any charge or lien, or incumbrance upon the said estate. And whereas it has been made to appear before me that you have each some lien, charge or incumbrance upon the said estate, and I have therefore caused you to be made part to this action, and have appointed the _____ day of _____, at _____ o'clock in the _____ noon, for you to appear before me, at my Chambers at _____, either in person or by your solicitor, to prove your claims.

Now you are hereby required to take notice: 1st. That if you wish to apply to discharge my order making you a party, or to add to, vary, or set aside the judgment, you must do so within fourteen days after the service hereof; and if you fail to do so, you will be bound by the judgment, and the further proceedings in this cause as if you were originally made a party to the action. 2nd. That if you fail to attend at the time and place appointed, you will be treated as disclaiming all interest in the land in question, and it will be dealt with as if you had no claim thereon, and your claim will be in fact foreclosed.

Dated this _____ day _____ of _____ A.D. 18 _____.

W. L. Master.

No. 44.

Notice to parties by writ having incumbrances.

(Court and Cause.)

Having been directed by the judgment in this action to inquire whether any person other than the plaintiff has any lien, charge or incumbrance upon the lands in question in this action subsequent to the plaintiff's claim, and to take an account of the amount due to the plaintiff and any such person. And it having been made to appear that you may have some lien, charge or incum-

brance thereon you are hereby notified that I have appointed
 day, the day of next at my cham-
 bers in the Court House at at o'clock to
 proceed with the said inquiry and to determine the amount of
 the claim of the plaintiff, and to such incumbrancers as may come
 in and prove their claims before me.

If you fail to attend upon such appointment, and to prove your
 claim, the reference may proceed in your absence, and you will
 receive no further notice of the proceedings in this action, and
 you will be treated as disclaiming any lien, charge or incumbrance
 upon the said lands, and will stand foreclosed from any such claim.

Dated this day of 19 .

W. L., Master.

No. 45.

Notice to all original defendants.

(Court and Cause.)

Having been directed by the judgment in this action to inquire
 whether any person other than the plaintiff has any lien, charge
 or incumbrance upon the lands in question in this action subject
 to the plaintiff's claim thereon.

You are hereby notified that it has been made to appear to me
 that the persons named in the schedule hereto may have some lien,
 charge or incumbrance thereon, and I have, therefore, caused such
 of them as are not already parties thereto to be added as parties
 in my office, and have appointed day, the day of
 next at my chambers in the Court House at
 at o'clock, to inquire and determine whether the said
 parties have any such lien, charge or incumbrance, and to fix and
 ascertain the amount thereof, and the amount of the plaintiff's
 claim upon his security.

If you do not then and there attend, the reference will be pro-
 ceeded with in your absence, and you will receive no further notice
 of the proceedings in this action.

Dated this day of 19 .

W. L., Master.

SCHEDULE.

Incumbrancer.

E.g.

	Nature of claim.
A. B.	Mortgage dated.
C. D.	Execution.
E. F.	Mechanic's lien.

No. 46.

Advertisement for Creditors.

(Court and Cause not necessary.)

Pursuant to a judgment [or an order] in an action in the Su-
 preme Court of Ontario of A. against B., the creditors of A. B.,
 late of in the County of , who died in or

about the month of 18 , are , on or before the day of 18 , to send by post, prepaid to E. F., of the solicitor for the defendant C. D., the executor [or administrator] of the deceased [or as may be directed] their Christian and surnames, addresses and description, the full particulars of their claims, a statement of their securities, and the nature of the securities (if any) held by them; or in default thereof, they will be peremptorily excluded from the benefit of the said judgment [or order]. Every creditor holding any security is to produce the same before me, at my Chambers, at, on the day of , 18 , at o'clock in the noon, being the time appointed for adjudication on the claims.

Dated this day of , 18 .

G. B., Master.

Con. Rules, Form 36.

No. 47.

Notice to Creditors to produce Documents.

You are hereby required to produce, in support of the claim sent in by you, against the estate of A. B., deceased [describe any document required], before the Master in Ordinary (or other Master or officer) at his Chambers, at, &c., on the day of , 18 , at o'clock in the noon.

Dated this day of , 18 .

No. 48.

Notice to Creditor that claim allowed.

The claim sent in by you against the estate of A. B., deceased, has been allowed at the sum of \$, [with interest thereon at \$ per cent., per annum, from the day of , 18 , and \$ for costs, or as the case may be.]

If part only allowed, add.—If you claim to have a larger sum allowed, you are hereby required to prove such further claim. and you are to file [&c., as in Form No. 82.]

No. 49.

Notice to Creditor to prove his claim.

You are hereby required to prove the claim sent in by you against the estate of A. B., deceased. You are to file such affidavit as you may be advised in support of your claim, give notice thereof to , Master [or as the case may be], on or before the day of , 18 , and attend personally, or by your solicitor, at his Chambers, on the day of , 18 , at o'clock in the noon, being the time appointed for adjudicating on the claim.

No. 50.

Notice that Cheques may be received.

The cheques for the amounts directed to be paid to the creditors of A. B., deceased, by an order made in this action [or matter] dated the day of , 18 , may be obtained at the Accountant's Office, in Osgoode Hall, Toronto, on and after the day of , 18 .

No. 51.

REPORTS, ETC., BY MASTERS, ETC.

(Data.)

Form of Report in Administration Suit.

Pursuant to the judgment herein made, dated the day of 18 , having caused an office copy thereof to be served upon [state the names of persons served, and also the names of those upon whom service has been dispensed with, and the reason for dispensing with service], I proceeded to dispose of the matters referred to me, and thereupon was attended by the solicitors for all parties interested [or as the case may be], and I find as follows:

1. The personal estate not specifically bequeathed of the testator come to the hands of the executors, and wherewith they are chargeable, amounts to the sum of \$, and they have paid, or are entitled to be allowed thereout, the sum of \$, leaving a balance due from [or to] them, of \$, on that account.

[If no personal estate, say: No personal estate has come to the hands of the executors, nor are they chargeable with any.]

2. The creditors' claims sent in pursuant to my advertisement in that behalf (published in issues of the newspaper called), and which have been allowed, are set forth in the first Schedule hereto, and amount altogether to \$.

[If no creditors say: No creditor has sent in a claim pursuant to my advertisement in that behalf, nor has any such claim been proved before me.]

3. The funeral expenses of the testator amounting to \$ have been paid by the executors and are allowed to them in the account of personal estate.

4. The legacies given by the testator are set forth in the second schedule hereto, and with the interest therein mentioned, remain due to the persons named [or as the case may be.]

5. The personal estate of the said testator outstanding or undisposed of, is set forth in the third schedule hereto.

In this third schedule personal estate not specifically bequeathed should be set forth separately from the other personalty outstanding or undisposed of. If there is no specific bequest, it should be so stated in the body of the report.

6. The real estate which the said testator was seised of or entitled to, and the incumbrances (if any) affecting the same, are set forth in the fourth schedule hereto.

7. The rents and profits of the testator's real estate received by the said executors, or with which they are chargeable, amount to \$ and they have paid, or are entitled to be allowed thereout, the sum of \$, leaving a balance due from [or to] them of \$ on that account.

[If no rents, etc., received, say: No rents and profits have come to the hands of the said executors, nor are they chargeable with any.]

8. I have allowed the said executors the sum of \$ as a compensation for their personal services in the management of the said estate.

9. I have caused the real estate (other than parcels which were specifically ordered) to be sold and the purchasers have paid their purchase money into Court.

10. In the schedule I have shown how the money in Court is to be dealt with.

The first Schedule referred to in the foregoing report.

No.	NAMES OF CREDITORS.	PRINCIPAL.	INTEREST ALLOWED.		Costs of this Suit.	TOTAL.
			Rate per Cent.	Amount to date of Report.		
		\$ c.		\$ c.	\$ c.	\$ c.
	[Distinguish any which are secured by mortgage, lien, or otherwise entitled to any priority.]					

[No general form can well be framed for the other Schedules, but in all cases brevity is to be studied. Where particulars are given they should shew merely the general character of the things described; as, for instance, the Schedule of outstanding personality may say: A number of book debts outstanding amounting in the aggregate to \$; a quantity of household furniture and effects valued at \$; and the like short particulars should be given in other cases. Lands should be described without setting forth metes and bounds.]

[No general form can well be framed for the other Schedules, but in all cases brevity is to be studied. Where particulars are given they should shew merely the general character of the things described; as, for instance, the Schedule of outstanding personality may say: A number of book debts outstanding amounting in the aggregate to \$; a quantity of household furniture and effects valued at \$; and the like short particulars should be given in other cases. Lands should be described without setting forth metes and bounds.]

No. 52.

Standing Conditions of Sale.

1. No person shall advance less than \$10 at any bidding under \$500, nor less than \$20 at any bidding over \$500, and no person shall retract his bidding.

2. The highest bidder shall be the purchaser; and if any dispute arise as to the last or highest bidder, the property shall be put up at a former bidding.

3. The parties to the action, with the exception of the vendor, (and, naming any parties, trustees, agents, or others, in a fiduciary situation), shall be at liberty to bid.

4. The purchaser shall, at the time of sale, pay down a deposit, in proportion of \$10 for every \$100 of the purchase money, to the vendor, or his solicitor; and shall pay the remainder of the purchase money, on the day of next; and upon such payment, the purchaser shall be entitled to the conveyance, and to be let into possession; the purchaser at the time of sale to sign an agreement for the completion of the purchase.

5. The purchaser shall have the conveyance prepared at his own expense, and tender the same for execution.

6. If the purchaser fails to comply with the conditions aforesaid, or any of them, the deposit and all other payments made thereon, shall be forfeited, and the premises may be resold; and the deficiency, if any, by such re-sale, together with all charges attending the same, or occasioned by the defaulter, are to be made good by the defaulter.

No. 53.

Report on Sale.

Pursuant to the judgment, bearing date the day of , and made in this cause, I have, in the presence of (or, after notice to), all parties concerned, settled an advertisement and particulars and conditions of sale, for the sale of the lands mentioned or referred to in the said judgment (or order), and such advertisement having, according to my directions been published in the (naming the newspaper or newspapers), once in each week for the weeks immediately preceding the said sale (or as the case may be), and bills of the said sale having been also, as directed by me, published in different parts of the township (town or city) of and the adjacent county and villages (or as the case may be), the said lands were offered for sale by public auction, according to my appointment, on the day of , by me (or by Mr. of , appointed by me for that purpose, auctioneer, and such sale was conducted in a fair, open and proper manner, when , of was declared the highest bidder for, and became the purchaser of the same, at the price or sum of \$, payable as follows (set out shortly the conditions of sale as to payment of the purchase money.)

All which having been proved to my satisfaction by proper and sufficient evidence, I humbly certify.

SUBPENAS, ETC., FOR EXAMINATION OF WITNESSES, ETC.

No. 54.

Subpœna ad Testificandum (General Form.)

George the Fifth of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, To greeting: We command you to attend before at on day the day of 18 , at the hour of in the noon, and so from day to day, until [the above cause is tried, or as may be], to give evidence [or for examination for discovery or as may be] on behalf of the (plaintiff or defendant.)

Witness, the Honourable
day of 18 .

Chief Justice of Ontario, the

NOTE.—All writs of *subpœna*, etc., and execution shall have the following memoranda:—

In the margin:

Issued from the _____ office of the _____ of the High Court of Justice in the County of _____

To be indorsed:

This writ was issued by A. B., of _____, Solicitor for the plaintiff (or as the case may be).

No. 55.

Subpœna Duces Tecum (General Form.)

George the Fifth of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, To _____ greeting: We command you to attend before _____ at _____ on _____ day the _____ day of _____ 18 _____, at the hour of _____ in the _____ noon, and so from day to day [until the above cause is tried, or as may be] to give evidence [or for examination for discovery or as may be] on behalf of the _____ and also to bring with you and produce at the time and place aforesaid (*specify documents to be produced.*)

Witness the Honourable _____ Chief Justice of Ontario, the _____ day of _____ 18 _____

No. 56.

Subpœna ad Testificandum at Assizes.

George the Fifth of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, To _____ greeting: We command you to attend before our Justices assigned to take the Assizes in and for the county of _____ to be holden at _____ on _____ day the _____ day of _____ 18 _____, at the hour of _____ in the _____ noon, and so from day to day during the said Assizes until [the above cause is tried, or as may be] to give evidence on behalf of the _____

Witness the Honourable _____ Chief Justice of Ontario, the _____ day of _____ 18 _____

No. 57.

Subpœna Duces Tecum at Assizes.

George the Fifth of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, To _____ greeting: We command you to attend before our Justices assigned to take the Assizes in and for the county of _____ to be holden at _____ on _____ day the _____ day of _____ 18 _____, at the hour of _____ in the _____ noon, and so from day to day during the said Assizes,

until the above cause is tried, to give evidence on behalf of the
, and also to bring with you and produce at the time and
place aforesaid (*specify documents to be produced*).

Witness, the Honourable _____ Chief Justice of Ontario,
the _____ day of _____ 18 .

No. 58.

Habeas Corpus ad Testificandum.

George the Fifth of the United Kingdom of Great Britain and
Ireland, and of the British Dominions beyond the Seas, King, De-
fender of the Faith, Emperor of India, To the [keeper of our
prison at].

We command you that you bring _____, who it is said is detained
in our prison under your custody _____, before _____ at
on _____ day the _____ day of _____ at the hour of
_____ in the _____ noon, and so from day to day until the
above action is tried, to give evidence on behalf of the _____.
And that immediately after the said _____ shall have so given
his evidence you safely conduct him to the prison from which he
shall have been brought.

Witness, etc.

No. 59.

Warrant for arrest of a defaulting witness.

Province of Ontario,
County of _____

To E. F., Sheriff, etc.

Whereas proof has been made before me that H. N. was duly
subpoenaed to give evidence on behalf of the plaintiff (*or as the
case may be*), in this cause at the sittings of the Court of Assize
(*or as the case may be*) at Toronto (*or as the case may be*, which
commenced on the _____ day of _____ 18); that the presence
of the said H. N. is material to the ends of justice; and that the
said H. N. has failed to attend in accordance with the require-
ments of the subpoena.

These are therefore to command you to take the said H. N. and
to bring and have him before me at the said sittings, or before such
other Judge as may be presiding thereat, there to testify what he
may know concerning the matters in question in the said cause, and
that you detain him in your custody until he shall have given his
evidence, or until the said sittings shall have ended, or until other
order be made by the Court concerning him.

Given under my hand, this _____ day of _____
A.D. 18 _____, at _____

Form 60.

Commission to Examine Witnesses.

(*Court and Cause.*)

George V., by the grace of God of the United Kingdom of Great
Britain and Ireland and of the British Dominions beyond the Seas,
King, Defender of the Faith, Emperor of India.

To _____, greeting.

Know ye that We, in confidence of your prudence and fidelity,

have appointed you a Commissioner for the purpose of taking evidence in the above cause now pending in Our said Court; and We do hereby give you full power and authority to administer all necessary oaths and to do all things necessary for the taking of the evidence more particularly mentioned in the order for the issue of this Commission, a copy whereof is hereunto attached. Forthwith after taking such evidence you will return the same, together with these presents. In the execution of this Commission you will have due regard to the general rules of practice relating to Commissions, hereunto appended, and the terms of the order hereto attached and the instructions hereunder written.

Witness the Honourable _____, Chief Justice of
Our said Court at Toronto, this _____ day of _____, in the year
of Our Lord one thousand nine hundred and _____

Signature of Officer.

Issued from the _____ office _____ of the Supreme
Court of Ontario at _____ in the County of _____
under and pursuant to the order of _____ bearing
date the _____ day of _____, A.D. 189 _____

Signature of Officer.

INSTRUCTIONS TO COMMISSIONER.

- (1) See that proper notice is given to the parties concerned.
- (2) Follow strictly all the requirements of the general rules and special order attached hereto.
- (3) Before acting on this commission take the commissioner's oath hereon endorsed.
- (4) After the commission has been executed, attach the depositions, exhibits and all other papers to the commission, and complete and sign the "Commissioner's Return" endorsed hereon.
- (5) Securely enclose the commission and attached papers, and mail them in a sealed envelope to
postage prepaid. Indorse the envelope as follows: "Commission in
—vs. ——. (*Signature of Commissioner.*)"

6. USE THE FOLLOWING FORMS OF OATH.

Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said commissioners named in the commission within written, as far forth as you are directed and employed by the commission to take, write down, transcribe or engross the said questions and depositions. So help you God.

Witnesses' Oath.

You are true answer to make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.

Interpreter's Oath.

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations which shall be administered to, and all and every the questions

which shall be exhibited or put to all and every witness and witnesses produced before and examined by the commissioners named in the commission within written, as far forth as you are directed and employed by the said commissioners, to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God

7. Notice of the execution of this commission is to be given to _____, representing the plaintiff,
and to _____, representing the defendant.

(Signature of Officer issuing Commission.)

GENERAL RULES.

(Copy Rules 285 to 295, inclusive.)

NOTE.—The Commissioner's oath may be taken: In England or Ireland before a Commissioner authorized to administer oaths in the Supreme Court of Judicature of England or Ireland; in England or Ireland before a Judge of the Supreme Court of Judicature of England or Ireland; in Scotland before a Judge of the Court of Session or the Justiciary Court of Scotland; before a Judge of any of the County Courts of Great Britain or Ireland, within his county; in Great Britain or Ireland, or in any Colony of His Majesty, or in any foreign country, before the Mayor or Chief Magistrate of any City, Borough or Town corporate, certified under the common seal of such City, Borough, or Town corporate; in any colony belonging to the Crown of Great Britain, or any dependency thereof, or in any foreign country before a Judge of any Court of Record or of supreme jurisdiction; in the British Possession in India, before any Magistrate or Collector certified to have been such under the hand of the Governor of such Possession; in Quebec, before a Judge or Prothonotary of the Supreme Court or Clerk of the Circuit Court; in any foreign place, before any Consul, Vice-Consul or Consular Agent of His Majesty exercising his functions; before a Notary Public and certified under his hand and official seal; or before a Commissioner authorized by the laws of Ontario to take such affidavits.

THE COMMISSIONER'S OATH.

I, _____ the Commissioner within named, do hereby swear that I will, according to the best of my skill and knowledge, truly and faithfully and without partiality to any or either of the parties in this case, take the evidence of each and every witness produced and examined by virtue of this commission, and will cause the said depositions so taken to be truly and faithfully transcribed and returned. So help me God.

(Signature of the Commissioner.)

Sworn before me at _____, this _____ day of _____, 19____
(Signature and office of person before whom oath taken.)

RETURN TO THE WITHIN COMMISSION.

The return to the within Commission appears by the depositions and papers thereunto annexed; and I, the undersigned Commissioner, do hereby certify that the proper oaths were administered by me to the Clerk taking down and transcribing the said evidence, and to the witnesses whose depositions are hereunto attached (and to any interpreter called upon by me to interpret the evidence of any of the said witnesses), and that the said depositions were duly and properly taken by me, and that the evidence was duly and correctly transcribed.

(Signature of Commissioner.)

ORDERS.

NOTE.—In all orders except decretal orders and vesting orders the shortened style of cause shall be sufficient, *e.g.*, Between John Jones, Plaintiff, and Aaron Smith and others, Defendants.

No. 61.

Praecepte Order for Security for Costs.

1. Upon application of the defendant, *C.D.*, and it appearing by the indorsement on [the copy of the writ of summons] served on said defendant that the said plaintiff resides at out of the jurisdiction of this Court.

2. It is ordered, that the plaintiff do within four weeks from the service of this Order, give security on behalf in the penal sum of four hundred dollars, to answer the defendant, costs of this action, and that all proceedings be in the meantime stayed.

3. And it is further ordered, that in default of such security being given by the plaintiff this action be as against such defendant dismissed with costs, unless the Court or Judge upon special application for that purpose otherwise orders.

No. 62.

Praecepte Order to continue Proceedings.

Upon the application of , alleging that since the in this action, and about the day of A.D. 18 , the above-named departed this life, having (*recite facts showing who are the legal representatives*), who now the legal representative of the said ; and further alleging that it is desirable or necessary that this action should be continued at the suit of as part plaintiff thereto against as part defendant thereto.

It is therefore ordered that this cause may be continued at the suit of as part plaintiff thereto against as part defendant thereto by order to proceed and that the same and all proceedings therein do stand in the same plight and condition as they were in at the time of the as aforesaid.

No. 63.

Praecepte Order to change Solicitor.

Upon the application of . It is ordered that he be at liberty to change his Solicitor in this cause by making his Solicitor in the place and stead of his present Solicitor.

No. 64.

Praecepte Order to tax a Solicitor's Bill delivered (on Client's application).

In the matter of *A.B.*,
One of the Solicitors of the Supreme Court of Ontario.
Upon the application of , and the applicant submitting to pay what, if anything, shall be found due to the said Solicitor upon taxation of the bill hereinafter mentioned.

1. Upon the application of _____ and upon _____ filed reading the affidavit of _____ and upon hearing the solicitor (or counsel) for _____ (where any recital is necessary, and it appearing that, etc.)

2. It is ordered that _____

3. And it is further ordered that the costs of this application be _____

No. 69.

Order for Service out of the Jurisdiction.

1. Upon the application of _____, and upon reading the affidavit of _____ filed, and upon hearing the solicitor (or counsel) for the plaintiff _____

2. It is ordered that the plaintiff _____ be at liberty to issue a writ for service out of the jurisdiction on the defendant who resides at _____

3. And it is further ordered that service of the said writ of summons and of this order upon the defendant _____ at _____ aforesaid, shall be good and sufficient service of the said writ upon the said defendant.

4. And it is further ordered that the time for appearance to the said writ be within _____ days after the service thereof.

5. And it is further ordered that the costs of this application be _____

No. 70.

Order for Particulars.

1. Upon the application of _____, and upon reading the affidavit of _____, and upon hearing the solicitor (or counsel) for _____

2. It is ordered that the plaintiff (or defendant) deliver to the defendant (or plaintiff) [an account in writing of the particulars of the plaintiff's claim in this action, (or particulars of the paragraph of the statement of claim or defence, stating in what *as may be ordered*)], and that unless such particulars be delivered within _____ days from the date of this order [all further proceedings be stayed until the delivery thereof, or as may be ordered].

3. And it is further ordered that the costs of this application be _____

No. 71.

Order to Dismiss for want of Prosecution.

1. Upon the application of _____, and upon reading the affidavit of _____ filed, and upon hearing the solicitor (or counsel) for _____

2. It is ordered that this action be and the same is hereby dismissed for want of prosecution with costs, including the costs of this application, to be paid to the defendant by the plaintiff, forthwith after taxation _____

No. 72.

Stop Order.

1. Upon the application of _____ and upon reading the affidavit of _____ filed, and upon hearing the solicitor for [the applicant] and the applicant by his solicitor submitting to be bound by any order the Court may make as to costs or damages occasioned by this order.

2. It is ordered that any costs or moneys now standing or hereafter to be paid into Court to the credit of this cause (or matter) to which the (naming the party) is entitled [or held by (the Accountant or other officer) for the (naming the party)] or which may be directed to be paid to him and any interest to accrue due thereon be not paid out or otherwise dealt with or disposed of without notice to the said (applicant).

No. 73.

Order for Commission to Examine Witnesses.

1. Upon the application of _____, and upon reading the affidavit of _____ filed, and upon hearing the solicitor (or counsel) for _____

2. It is ordered that a commission may issue out of this Court directed to _____ for the examination *viva voce* of witnesses on behalf of the said _____ at _____

3. And it is further ordered that within _____ days after service of this order the _____ do serve a notice giving _____ the name and place of business of _____ agent in _____ aforesaid, upon whom notice of the said examination may be served.

4. And it is further ordered that _____ days previously to the sending out of the said commission, the solicitor of the said _____ shall give to the solicitor of the said _____ notice in writing of the mail or other conveyance by which the commission is to be sent out.

5. And it is further ordered that upon the execution of the said commission the said commission and the depositions of the witnesses be without delay after the said commission shall have been executed transmitted to the office of the _____ of the _____ this Court at _____

No. 74.

Order of Reference.

1. Upon the application of _____, and upon reading the affidavit of _____ filed, and upon hearing the solicitor (or counsel) for _____

2. It is ordered that the following questions arising in this action namely, _____ be referred for inquiry and report to _____

3. And it is further ordered that the costs of this application be _____

No. 75.

Order of Reference (another form).

1. Upon the application of _____, and upon reading the affidavit of _____ filed, and upon hearing the solicitor (or counsel) for _____

2. It is ordered that the [state whether all or some and, if so, which of the questions are to be tried] in this action be tried by _____

3. (To be used in a case where it is not necessary to reserve any questions as to costs or otherwise.) And it is further ordered that the defendant (or the party by whom any amount shall be found by the referee to be due) do pay to the plaintiff (or the party to whom such amount shall be found due) the amount which the referee shall find to be payable, forthwith after the confirmation of the referee's report.

4. And it is further ordered that the said referee do determine the question of the costs of this action and of the said reference.

No. 76.

Order for Examination of Witnesses before Trial.

1. Upon the application of _____, and upon reading the affidavit of _____ filed, and upon hearing the solicitor (or counsel) for _____

2. It is ordered that _____ a witness on behalf of the _____ be examined *visa voce* on oath before _____ on _____ days' notice in writing of the time and place where the examination is to take place being given to the _____ solicitor.

3. And it is further ordered that the examination so taken or an office copy thereof may be read and given in evidence at the trial, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the _____ or his solicitor as to his belief.

No. 77.

Garnishee Order (Attaching Debts).

In the Supreme Court of Ontario.

The Master in Chambers (or as may be).

[Date.]

Between A. B., Judgment Creditor,
and
C. D., Judgment Debtor.
and
E. F., Garnishee.

1. Upon the application of _____, and upon reading the affidavit of _____ filed, and upon hearing the solicitor (or counsel) for _____

2. It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor on the _____ day

of 18 , for the sum of \$, on which judgment the said sum of \$, remains due and unpaid, and any other judgments against the said judgment debtor entitled by law to share therein.

3. And it is further ordered that the said garnishee attend before the in Chambers (or as the case may be) on day the day of 18 , at o'clock in the noon, on an application by the said judgment creditor, that the said garnishee pay to the said judgment creditor the debt due from him to the said judgment debtor, or so much thereof as may be sufficient to satisfy the judgment.

No. 78.

Notice of Garnishee Order, in lieu of Order, to be served out of Ontario.

To E. F., of

Take notice that an order has been obtained attaching all debts owing or accruing due from you to the above-named judgment debtor, to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor, on the day of 18 , for the sum of \$, on which judgment the sum of \$ remains due and unpaid, and any other judgments against the said judgment debtor entitled by law to share therein.

And take further notice that an order has also been obtained appointing the day of , 18 , at o'clock in the forenoon, for the making of an application before at by the said judgment creditor, for a further order that you pay to the said judgment creditor the debt due to the said judgment debtor from you, or so much thereof as may be sufficient to satisfy the said judgment; and an application will be made accordingly, and if you do not attend on the return of the said motion an order may be made in your absence.

No. 79.

Garnishee Order (Final).

1. Upon the application of , and upon reading the affidavit of filed, and the order herein dated the day of , 18 , whereby it was ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor on the day of , 18 , for the sum of \$, on which judgment the said sum of \$ remained due and unpaid, and upon hearing the solicitor (or counsel) for

2. It is ordered that the said garnishee do forthwith pay the debt due from him to the said judgment debtor into Court to the credit of this matter.

3. And it is further ordered that the costs of the judgment creditor of this application be first paid from the said money and that the balance be then paid to the sheriff of the County of to be dealt with under the provisions of the Creditors' Relief Act.

No. 80.

Interpleader Order.

1. Upon the application of the said sheriff for an interpleader order, and upon reading the affidavit of _____ filed, and upon hearing the solicitor (or counsel) for _____ and the said claimant not appearing though duly served with notice as by affidavit of _____ appears

2. It is ordered that the claimant and all persons claiming under him be and they are hereby forever barred of and from all claim to the goods and chattels seized herein by the said sheriff as against _____, that no action be brought against the above-named [sheriff] for or in respect to the seizure of said goods.

3. And it is further ordered that the costs of this application be _____

No. 81.

Interpleader Order.

1. Upon the application of _____, and upon reading the affidavit of _____ filed, and upon hearing the solicitor (or counsel) for _____

2. It is ordered that the above-named claimant be substituted as defendant in this action in lieu of the present defendant.

3. And it is further ordered that the costs of this application be _____

No. 82.

Interpleader Order.

1. Upon the application of the said sheriff for an interpleader order, and upon reading the affidavit of _____ filed, and upon hearing the solicitor (or counsel) for _____

2. It is ordered that the said sheriff proceed to sell the goods seized by him under the writ of *feri facias* issued herein, and pay the net proceeds of the sale, after deducting the expenses thereof (or as otherwise ordered) into Court in this cause, to abide further order herein.

Or. It is ordered that upon payment into Court by the said claimant within _____ from this date of the sum of \$ _____ (or of the appraised value of the goods and chattels seized by the said sheriff herein, together with the expenses of appraisalment), or upon the said claimant within the same time, giving to the execution creditor security to the satisfaction of _____ for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment by the said claimant to the above-named sheriff of the possession money from (the date of his notice of motion or of the order or such date as may be proper), and upon production to the said sheriff of the Accountant's certificate that the money has been paid into Court, or the certificate of the said _____ that security has been given as aforesaid, the said sheriff do withdraw from the possession of the goods and chattels seized by him under the writ of *feri facias* herein.

And it is further ordered that unless such payment be made (including the sheriff's possession money) or such security be given within the time aforesaid, or in case before the expiration of the time aforesaid, the claimant desires the said goods and

chattels to be sold by the said sheriff the said sheriff proceed to sell the said goods and chattels, and pay the proceeds of the sale, after deducting the expenses thereof (*or as otherwise ordered*) and the possession money as aforesaid, into Court to the credit of this matter, to abide further order herein.

3. And it is further ordered that the parties proceed to the trial of an issue in the Supreme Court of Ontario, (*or in the County Court of the County of*) in which the claimant (*or execution creditor*) shall be plaintiff and the execution creditor (*or claimant*) shall be defendant, and that the question to be tried shall be whether at the time of [*insert here*] the delivery of the said writ to the sheriff *or the seizure by the sheriff or the sale by the sheriff as the case may require*] the goods and chattels seized [*in case the claimant is plaintiff*] were the property of the claimant as against the execution creditor [*or in case the execution creditor is plaintiff*] were exigible under the execution of (*the execution*) as against the claimant].

4. And it is further ordered that such issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days thereafter and be tried at

5. And it is further ordered that the question of costs and all further questions be reserved to be disposed of by the Judge at the trial of the said issue, or if not so disposed of then to be disposed of in Chambers.

6. And it is further ordered that any other execution creditors desiring to take part in the contest of the said issue shall be at liberty to do so upon placing their executions against the goods of the defendant in the hands of the said sheriff within (ten) days from this date and upon notifying within the same time the solicitors for (*an execution creditor*) (who shall have the conduct of the said issue for all execution creditors taking part in it) of their desire to come in and of their agreement to contribute *pro rata* to the expense of the said contest according to the statute in that behalf.

7. And it is further ordered that no action be brought against the said sheriff for, or in respect to the seizure of the said goods and chattels or for anything done under this order.

No. 83.

Interpleader Order.

1. Upon the application of the sheriff of for an interpleader order and upon hearing read the affidavits of and upon hearing the solicitor (*or counsel*) for , and the claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner.

2. And it is ordered that

3. And it is further ordered that the costs of this application be

No. 84.

Interpleader Order.

1. Upon the application of the sheriff of for an interpleader order, and upon reading the affidavit of filed, and upon hearing the solicitor (*or counsel*) for

2. It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of *feri facias* issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

3. And it is further ordered that out of the proceeds of the said sale, (after deducting the expenses thereof, and rent, if any,) the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

4. And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be

No. 85.

Order of Replevin.

1. Upon the application of the above-named plaintiff, and upon reading the affidavit of _____ filed, and upon hearing the solicitor (or counsel) for

2. It is ordered that the sheriff of (*here insert the name of County, United Counties, District or City*), do without delay take the security required by Rule 369 [and where Rule 370 applies add and Rule 370] and cause to be replevied to the plaintiff, his goods, chattels and personal property following, that is to say: (*here set out description of property as in the affidavit filed*), which the said plaintiff alleges to be of the value of \$ _____, and to have been taken and unjustly detained (or unjustly detained, as the case may be) by the defendant, *C. D.*, in order that the said plaintiff may have his remedy in that behalf.

3. And it is further ordered that the said sheriff do forthwith, after the execution of this order, make return to (*insert here the officer in whose office the appearance in the action is to be entered*) what he shall have done in the premises, and do also return this order.

No. 86.

Order of Withernam.

1. Upon the application of the plaintiff, and it appearing by the return of the sheriff of _____ of _____, to the order of replevin made herein on the _____ day of _____, that the goods, chattels and personal property mentioned in the said order have been elogned by the defendant, *C. D.*, out of the bailwick of the sheriff of _____, to places to him unknown so that he could not replevy the same to the said plaintiff.

2. It is ordered that the said sheriff do forthwith take in withernam the goods, chattels and personal property of the said defendant, *C. D.*, and his bailwick, to the value of the goods, chattels and personal property by the said defendant, *C. D.*, before taken, and do forthwith deliver them to the said plaintiff to be kept by him until the said defendant, *C. D.*, delivers the goods, chattels and personal property last aforesaid to the said plaintiff.

3. And it is further ordered that if the said plaintiff shall give security to the said sheriff as provided by law for the prosecution of the plaintiff's claims and for the return of the goods, chattels and property so to be taken in withernam as aforesaid, if the return thereof shall be adjudged then the said sheriff do take security with two sufficient sureties from the said defendant *C. D.*, to answer to the said plaintiff for the taking and unjustly detaining of his goods, chattels and personal property aforesaid.

4. And it is further ordered that the said sheriff do forthwith make return to [the Central Office, Osgoode Hall, Toronto, or name the office in whose office the proceedings were commenced], what he shall have done in the premises, and do also return this order.

No. 87.

Order of Certiorari.

1. Upon the application of _____, and upon reading the affidavit of _____ filed, and upon hearing the solicitor (or counsel) for _____

2. It is ordered that _____ do send to the Central Office at Osgoode Hall, Toronto, (or as may be necessary) forthwith (or on the _____ day of _____) the _____, with all things touching the same, as fully and entirely as they remain in _____ together with this order, that this Court may further cause to be done thereupon what it shall see fit to be done.

No. 88.

Order of Prohibition.

1. Upon the application of _____, and upon reading the affidavits of _____ filed, and upon hearing the solicitor (or counsel) for _____, and it appearing that the said _____ has [entered an action against] *C. D.* in the said Court, and that the said Court has no jurisdiction in the said [cause] or to hear and determine the said [action] by reason that [*state facts shewing want of jurisdiction*].

2. It is ordered that the said be _____ and he is hereby prohibited from further proceeding in the said [action] in the said Court.

No. 89.

Order for Arrest.

1. Upon the application of _____, and upon reading the affidavit of _____ filed, and upon hearing the solicitor (or counsel) for _____

2. It is ordered that the sheriff of the County, United Counties or City where *C. D.*, the defendant (or one of the defendants), may be found, do forthwith arrest and take, or if already in custody, do detain the said *C. D.* and him safely keep until he shall have given security in this action for the sum of \$ _____, or shall by other lawful means be discharged from custody.

3. And it is further ordered that a copy of this order be served by the said sheriff on the said *C. D.*

4. And it is further ordered that the said _____ do, within ten days after his arrest under this order, cause security to be put in for him in this Court and in this action, either by the deposit in Court of the said sum of \$ _____, or by bond or other security, pursuant to the Rules of Court in that behalf, conditioned that the defendant will pay the amount by any judgment in the action adjudged to be recovered or directed to be paid either as a debt or for damages or costs, or will render himself to the custody of the sheriff, or that his sureties will do so for him.

JUDGMENTS.

No. 90.

NOTE.—The full style of cause is necessary in all judgments.

Default of Appearance or Defence in case of Liquidated Demand.

The day of , 18 .

The defendants [or the defendant C. D.] not having appeared herein [or not having delivered any statement of defence], it is this day adjudged that the plaintiff recover against the said defendant \$,] and [costs to be taxed, or where the officer signing judgments is also the taxing officer, \$ for costs.]

Judgment signed the day of , 18 .
(Signature of Officer.)

The following may be appended to any judgment at or after the signing of the judgment on production of the taxing officer's certificate:

The above costs have been taxed and allowed at \$, as appears by a taxing officer's certificate dated the day of 18 .

(Signature of Officer.)

No. 91.

Judgment in Default of Appearance in action for Recovery of Land.

No appearance having been entered to the writ of summons, herein, it is this day adjudged that the plaintiff recover possession of the land in the said writ mentioned, being (*describing the land*). [Where plaintiff is so entitled add "and do also recover against the said C. D., (*the defendant*) his costs to be taxed or \$ for costs."]

No. 92.

Judgment in Default of Defence in action for Recovery of Land.

No statement of defence having been delivered herein, it is this day adjudged that the plaintiff recover possession of the land in the statement of claim herein mentioned being and do also recover against the said C. D. (*the defendant*) [his costs to be taxed or \$ for costs].

No. 93.

Judgment in Default of Defence in action for Recovery of Land with Damages.

The defendant not having delivered any statement of defence, it is this day adjudged that the plaintiffs recover possession of the land in the statement of claim herein mentioned, and described as , in County of and costs to be taxed, and it is further adjudged that the plaintiffs recover against the defendant damages to be assessed.

No. 94.

Judgment upon Confession by Defendant of action for Recovery of Land.

The defendant *C. D.* having confessed this action (or having confessed this action as to part of the said land, that is to say: (*state the part*) it is this day adjudged that the said plaintiff do recover possession of the land in the writ (or statement of claim) mentioned (or of the said part of the said land) with the appurtenances and [costs to be taxed or \$ for costs.]

No. 95.

Judgment of seisin for Dower in Default of Appearance.

The defendant not having appeared to the writ of summons, it is this day adjudged that the plaintiff do have seisin of her third part or dower in the lands in question in this action, and that the same be forthwith delivered to her and set out by metes and bounds.

(*If damages are claimed add* And it is further adjudged that the plaintiff do recover against the defendant damages to be assessed.)

No. 96.

Final Judgment in Default of Appearance or Defence, Recovery of Chattels.

The defendants [or the defendant *C. D.*] not having appeared herein [or not having delivered any statement of defence] it is this day adjudged that the plaintiff recover against the said defendant [or that the said defendant do forthwith deliver to the plaintiff] possession of the chattels in the writ [or statement of claim] mentioned, and do also recover against the said defendant his costs to be taxed [or \$ for costs].

No. 97.

Interlocutory Judgment in Default of Appearance or Defence where Demand Unliquidated.

No appearance having been entered to the writ of summons (or no statement of defence having been delivered by the defendant] herein;

It is this day adjudged that the plaintiff recover against the defendant the value of the goods or damages, (or both, as the case may be,) to be assessed.

No. 98.

Final Judgment in Default of Appearance or Defence, after Assessment of Damages.

No appearance having been entered to the writ of summons [or no statement of defence having been delivered by the defendant] herein, and the damages which the plaintiff was entitled to recover having been assessed at \$, as by dated the 18 , appears, it is adjudged that the plaintiff recover \$ and [costs to be taxed, or \$ for costs].

No. 99.

Judgment for Plaintiff's Costs after Confession of Defence.

The defendant in his statement of defence herein having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the day of 18 delivered a confession of that defence.

It is this day adjudged that the plaintiff recover against the defendant [costs to be taxed or \$ for costs].

No. 100.

Judgment for Costs after acceptance of Money paid into Court.

The defendant having paid into Court in this action the sum of \$ in satisfaction of the plaintiff's claim, and the plaintiff having by his notice dated the day of 18 , accepted that sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within 48 hours after the said taxation;

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

No. 101.

Form of Judgment on Præcipe for Sale or Foreclosure WITH REFERENCE AS TO INCUMBRANCES, etc., and orders for Immediate Payment and Delivery of Possession.

1. Upon reading the writ of summons issued in this action, and the statement of claim (*if any*) and an affidavit of service of the said writ on the defendant, and no appearance having been entered (*or* and the defendant having made default in delivering a defence),

2. It is ordered and adjudged that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for redemption or sale (*or* redemption or foreclosure) and that for these purposes this cause be referred to the Master at

3. (*Where judgment is for immediate payment add.* And it is further ordered and adjudged that the defendant do forthwith pay to the plaintiff the sum of \$, being the amount, due to him for principal money, interest and costs at the date hereof; and upon payment of the amount due to the plaintiff (*when judgment is for sale add.* before the sale hereinbefore directed shall have taken place) that (subject to the provisions of section 3 of *The Mortgages Act*, the plaintiff do assign and convey the mortgaged premises, and deliver up all documents relating thereto.)

4. (*Where judgment is for recovery of possession add.* And it is further ordered and adjudged that the defendant do forthwith deliver to the plaintiff, or to whom he may appoint, possession of the lands and premises in question, in this cause, or of such part thereof as may be in the possession of the said defendant.)

No. 102.

Form of Judgment on præcipe for Foreclosure or Sale, ACCOUNT TAKEN BY REGISTRAR and Orders for Immediate Payment and Delivery of Possession.

1. Upon reading the writ of summons issued in this action, and an affidavit of service of the said writ and no appearance having been entered

2. This Court finds that the subsequent interest at the rate of _____ per centum per annum on the sum of _____ principal money secured by the indenture of mortgage in the writ of summons [or pleadings] mentioned, up to the _____ day of _____ next, being the time appointed for payment as hereinafter mentioned amounts to _____, and that the costs of the plaintiff _____ amount to _____ which said subsequent interest and costs being added to the sum of _____ claimed by the indorsement on the writ served on the defendant _____ make together the sum of _____

3. And upon the said defendant paying the said sum of _____ into the _____ bank _____ at the _____ between the hours of ten o'clock in the forenoon and twelve o'clock noon of the _____ day of _____ next, to the joint credit of the plaintiff and the Accountant of the Supreme Court [where _____ for payment granted insert, in in case the plaintiff shall (where judgment is for sale add, before the sale hereinafter directed shall have taken place) recover the amount due to him under the order for payment hereinafter contained], it is ordered and adjudged, (subject to the provisions of section 3 of *The Mortgages Act.*) that the said plaintiff do assign and convey the mortgaged premises, and deliver up all documents relating thereto;

4. But in default of the said defendant making such payment by the time aforesaid, it is ordered and adjudged (where judgment is for foreclosure, after "adjudged," add "that the said defendant do stand absolutely debarred and foreclosed of and from all equity of redemption in and to the mortgaged premises;" where judgment is for sale, then after the words "adjudged," add "that the said premises be sold, with the approbation of the Master at _____)."

5. (If judgment is for foreclosure omit this clause.) And it is further ordered and adjudged that the purchasers do pay their purchase money into Court, to the credit of this cause, and that the same when so paid in be applied in payment of what has been found due to the said plaintiff together with subsequent interest and subsequent costs, to be computed and taxed by the said Master, and that the balance do abide the further order of the Court.

6. (Where judgment is for immediate payment add:) And it is further ordered and adjudged that the defendant _____ do forthwith pay to the plaintiff the sum of _____ being the amount due to him at the date hereof for principal money, interest and costs.

7. (Where judgment is for recovery of possession add:) And it is further ordered and adjudged that the defendant _____ do forthwith deliver to the plaintiff _____, or to whom he may appoint, possession of the mortgaged premises, or of such part thereof as may be in the possession of the said defendant _____.

No. 103.

Form of Judgment on præcipe for Redemption.

1. Upon reading the writ of summons issued in this action and an affidavit of service of the said writ, and no appearance having been entered

2. It is ordered and adjudged that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for the redemption of the premises in question, and that for this purpose the cause be referred to the Master at

3. And, (subject to the provisions of section 3 of *The Mortgages Act*), it is further ordered and adjudged that upon the plaintiff paying to the defendant what shall be found due to him, or in case nothing shall be found due to the defendant then forthwith after the confirmation of the said Master's report, the defendant do reconvey the said mortgaged premises, and deliver up all documents relating thereto.

4. And it is further ordered and adjudged that in case the plaintiff shall make default in payment as aforesaid of what may be found due to the defendant that the plaintiff's action do stand dismissed out of this Court, with costs to be paid by the plaintiff to the defendant forthwith after taxation thereof.

5. And it is further ordered and adjudged that in case nothing shall be found due from the plaintiff to the defendant that the defendant do pay the plaintiff his costs of this suit forthwith after the taxation thereof, and in case any balance shall be found due from the defendant to the plaintiff that the defendant do pay such balance to the plaintiff forthwith after the confirmation of the Master's report.

No. 104.

General Form of Judgment for Administration.

1. Upon the application of the above-named plaintiff in the presence of the solicitor for the defendant [or no one appearing for the defendant although duly notified as by affidavit filed appears], and upon hearing read the affidavits and papers filed, and what was alleged by the solicitor for [the applicant or solicitors for all parties].

2. It is ordered and adjudged that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for the administration and final winding up of the personal [and real] estate of and for the adjustment of the rights of all parties interested therein, by the Master at

3. And it is further ordered and adjudged that all balances which may be found due from the plaintiff or defendant [or any or either of them] to the said estate be, forthwith after the same shall have been ascertained as aforesaid, paid into Court to the credit of this cause, subject to the further order of the Court.

4. And it is further ordered and adjudged that such personal [and real] estate, or such parts thereof as the said Master may hereafter direct, be sold, as the said Master may direct, and that the purchasers do pay their purchase money into Court to the credit of this cause, subject to the order of the Court

5. And it is further ordered and adjudged that the Master do execute conveyances for any infant parties who by reason of their tender years are unable to execute the same.

No. 105.

Form of Judgment for Partition or Sale.

1. Upon the application of the above named plaintiff in the presence of the solicitor for the defendant [or no one appearing for the defendant although duly notified as by affidavit filed appears] and upon hearing read the affidavits and papers filed, and what was alleged by the solicitor for [the applicant or all parties].

2. It is ordered and adjudged that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for the partition or sale of the lands and premises in the said affidavits mentioned, and for the adjustment of the rights of all parties interested therein, or for a partition of part and sale of the remainder of the said lands as may be most for the interest of the parties entitled to share therein by the Master at

3. And it is further ordered and adjudged that the said lands, or such part thereof as the said Master shall think fit, be sold, with the approbation of the said Master, freed from the claims of such of the incumbrancers thereon (if any) whose claims were created by parties entitled to the said lands before the death of the said testator [or intestate] as shall have consented to such sale, and subject to the claims of such of them as shall not have consented and freed also from the dower of [as the case may be,] and that the said Master do execute the conveyances on behalf of such of the infant parties as, by reason of their tender years, are unable to execute the same, and that the purchasers do pay their purchase money into Court to the credit of this cause, subject to the order of the Court.

4. And it is further ordered and adjudged that, in the event of a partition of the whole of the said land, or in the event of a partition of a part and the proceeds of the sale of the remainder being insufficient to pay the costs in full, the costs, or so much thereof as remains unpaid, be borne and paid by the said parties according to their shares and interests in the said lands [if there be any infant parties interested in the estate add] and that the proportion of the said costs payable by the infant parties respectively be, and the same is hereby declared to be, a lien on their respective shares, and that the plaintiff do pay the guardian of the infant defendants his costs of this suit and that the same be added to his own costs.

No. 106.

Final Judgment on Motion.

1. Upon the application of _____, and upon reading the affidavit of _____ filed, and upon hearing the Solicitor (or Counsel) for

2. It is ordered and adjudged that the plaintiff do recover against the defendant the sum of \$ _____ and costs to be taxed,

No. 107.

Judgment after trial.

In the Supreme Court of Ontario,

The Honourable Mr. Justice

the day of 18 .
(Date of pronouncing judgment.)

Between _____ Plaintiff
and _____ Defendant.

1. This action coming on for trial this day (or on the day of 18) at the sittings holden at _____ for trial of actions without a jury (or at the Assizes holden for the County of _____ at _____) in presence of counsel for all parties [or if some of the parties do not appear for the plaintiff and the defendant C. D. no one appearing for the defendants E. F. and G. H. although they were duly served with notice of the trial as by the affidavit of appears, or as may be] upon hearing read the pleadings and hearing the evidence adduced and

what was alleged by counsel aforesaid (*If judgment was reserved add this Court was pleased to direct this action to stand over for judgment, and the same coming on this day for judgment.*)

2. This Court doth order and adjudge *as may be directed*, [or if any declaration is necessary This Court doth declare (*e.g.* that the deed mentioned in the 4th and 5th paragraphs of the plaintiff's statement of claim is fraudulent and void as against the plaintiff and all other creditors of the defendant X. Y. except the defendant C. J. and doth order and adjudge the same accordingly.)]

3. And the Court doth further order and adjudge (*add any special or appropriate direction or reference to Master or other officer*)

4. *If so* And this Court doth reserve further directions and the question of costs until after the Master shall have made his report.

(*Signature of officer settling judgment where not the same person as the officer signing judgments.*)

Judgment signed the day of 18 .

X. Y., Judgment Clerk.

(*or other officer signing judgments.*)

The following may be appended at or after the signing of the judgment on production of the taxing officer's certificate.

The above costs have been taxed and allowed at \$ as appears by a taxing officer's certificate dated the day of 18 .

Signature of officer signing the judgment.

No. 108.

Judgment after trial (No. 2.)

(*Formal parts as in Form 107.*)

2. This Court doth order and adjudge that the plaintiff do recover from the defendant (*as may be directed*)

3. And this Court doth further order and adjudge that the defendant do pay to the plaintiff his costs of this action forthwith after taxation thereof [or this Court doth order and adjudge that this action be and the same is hereby dismissed with costs to be paid by the plaintiff to the defendant forthwith after taxation thereof.]

No. 109.

Judgment on Motion for Judgment.

1. Upon motion for judgment made this day unto this Court by counsel for the plaintiff (*or as may be*) and upon hearing read and upon hearing counsel for the defendant (*or as may be.*)

2. [*Where necessary* This Court doth declare, etc.]

3. [*And*] this Court doth order and adjudge, etc.

4. And this Court doth further order and adjudge, etc.

No. 110.

Judgment against a Married Woman.

This Court doth order and adjudge that the plaintiff do recover against the defendant the sum of \$ to be levied out of the separate property of the said defendant which she is now or may

hereafter be possessed of or entitled to, and any property which she may hereafter while discoverd be possessed of, or entitled to and not otherwise: but this judgment shall not render available to satisfy the same any separate property which the defendant was or may be restrained from anticipating unless by reason of section 21 of *The Married Women's Property Act*, such property shall be available to satisfy the judgment notwithstanding such restriction.

No. 111.

WRITS OF EXECUTION, &c.

Writ of Fieri Facias.

George, &c.

(Court and Cause).

To the Sheriff of greeting:

We command you that of the goods and chattels and lands and tenements in your bailiwick of *C. D.* you cause to be made the sum of \$ and also interest thereon from the day of [*day of the judgment or order, or day on which the money is directed to be paid, or day from which interest is directed by the order to run, as the case may be*], which said sum of money and interest were by a judgment in this action bearing date the day of adjudged to be paid by the said *C. D.* to *A. B.*, and also the further sum of \$ for the taxed costs of the said *A. B.*, mentioned in the said judgment, together with interest at the rate of 5 per cent. per annum thereon from the day of , (*the date of the certificate of taxation.*) and that you have before our Justices of the Supreme Court of Ontario so much of that money as you shall have made from the said goods and chattels immediately after the execution hereof, and so much thereof as you shall have made from said lands and tenements immediately after the expiration of twelve months from the day of your receipt hereof, to be paid to the said *A. B.* in pursuance of the said judgment [*or order as the case may be*]. And in what manner you shall have executed this our writ make appear to our Justices aforesaid immediately after the execution thereof. And have there then this writ.

Witness, the Honourable
this day of 18 ,

Chief Justice of Ontario,

(*Signature of officer*)

Issued from the office of the

at

(*Signature of officer.*)

Indorsements.

The is entitled to receive for this and other writs renewals of the same, the following sums

For this writ, \$6.

(*Signature of Officer.*)

For 1st renewal,

For 2nd renewal,

Etc., etc., (*as may be necessary*).

Levy \$ and \$ for costs of execution, etc., and also interest on \$ at five per centum per annum from the day of 18 , until payment; besides sheriff's poundage, officer's fees, costs of levying, and all other legal incidental expenses.

This writ was issued by

of
agent for
of
solicitor for the

No. 112.

Fi. Fa. against an Executor or Administrator on a judgment de bonis testatoris et si non de bonis propriis as to the costs.

Formal portion in No. 111.

We command you that of the goods and chattels and lands and tenements in your bailiwick, which were of *C. D.*, deceased, at the time of his death in the hands of *E. F.*, executor of the last will and testament [or administrator of the estate and effects] of the said *C. D.* to be administered, you cause to be made the sum of \$ _____ and also interest at the rate of five per centum per annum, from the _____ day of _____ 189 _____, which said sum of money and interest were by a judgment of our said Court, bearing date the _____ day of _____ in 189 _____, adjudged to be paid by the said *E. F.* as executor (or administrator) as aforesaid to the said *C. D.* And further, that of the goods and chattels and lands and tenements in your bailiwick which were of *C. D.*, deceased, at the time of his death in the hands of *E. F.* as executor (or administrator) as aforesaid to be administered, if the said *E. F.* has so much in his hands to be administered you further cause to be made the sum of _____ for the taxed costs of the said *A. B.* mentioned in the said judgment, together with interest thereon at the rate of 5 per centum per annum from the _____ day of _____ 189 _____, and that if he has not so much, then that you cause to be made of the proper goods and chattels and lands and tenements in your bailiwick of the said *E. F.* the said sum of _____, together with interest thereon as aforesaid, and that you have before, &c. (Conclude as in No. 111.)

No. 113.

Fieri facias against a Married Woman.

Modify the general form so as to make it follow the form of judgment. (see Form 110.)

No. 114.

Fieri Facias on a Judgment or Order for Costs.

We command you that of the goods and chattels and lands and tenements of _____ in your bailiwick you cause to be made the sum of _____ for certain costs which by [a judgment or an order] in this action dated the _____ day of _____ 18 _____, were [adjudged or ordered] to be paid by the said _____ to _____ and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of five per centum per annum from the _____ day of _____ 18 _____, [the date of the certificate of taxation] and that you have before our justices of the Supreme Court of Ontario so much of the said sum and interest as you shall have made from the said goods and chattels, immediately after the execution hereof, and so much thereof as you shall have made from the said lands and tenements immediately after the expiration of twelve months from the day of your receipt hereof, to be rendered to the said _____. And in what manner you shall have executed this our writ make appear to our said justices immediately after the execution hereof. And have there then this writ.

NOTE.—When costs are payable on a discontinuance after the words "certain costs," proceed, "which are payable by the plaintiff to the defendant upon the discontinuance of this action and which have been taxed," etc. When costs are payable under Rule 660, proceed "which are payable as the costs of an abandoned motion," etc.

No. 115.

Writ of Venditioni Exponas after a certificate or return of goods or lands on hand to full amount unsold for want of buyers.

Whereas by our writ we lately commanded you that of the goods and chattels and lands and tenements in your balliwick of C. D. [here recite the *feri facias*]. And on the day of the said writ you had taken goods and chattels [or lands and tenements] of the said C. D. to the value of the money and interest aforesaid, which said goods and chattels [or lands and tenements] remained in your hands unsold for want of buyers, and that therefore you could not have that money before our Justices aforesaid, as you were thereby commanded. Therefore, we being desirous that the said A. B. should be satisfied his money and interest aforesaid, command you that you expose to sale and sell, or cause to be sold, the goods and chattels [or lands and tenements] of the said C. D., so by you taken as aforesaid, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before our Justices aforesaid, immediately after the execution hereof, to be paid to the said A. B. And have there then this writ.

No. 116.

Ven. Ex. for Part, and Fi. Fa. Residue.

Whereas, by our writ we lately commanded you that of the goods and chattels and lands and tenements of in your balliwick you should cause to be made (here recite the *feri facias*) and you on the day of certified [or returned] to our said justices, that by virtue of the said writ you have taken [goods and chattels or lands and tenements] of the said to the value of , parcel of the said several sums of money and interest which [goods and chattels or lands and tenements] remained in your hands for want of buyers, and that therefore you could not have that money before our Justices aforesaid, as you were thereby commanded, and that the said had not any other or more [goods and chattels or lands and tenements] in your balliwick whereof you could cause to be made the residue of the moneys and interest aforesaid, or any part thereof; therefore we, being desirous that the said should be satisfied the said sums of money and interest, command you that you expose to sale, and sell, or cause to be sold, the said [goods and chattels or lands and tenements] of the said so by you taken as aforesaid, for the best price that can be got for the same, and have the said sum of parcel of the moneys and interest aforesaid arising from such sale, and any further or other moneys which you may receive by virtue of this writ before our Justices aforesaid, immediately after the execution hereof, to be rendered unto the said

If the writ and not merely a certificate has been returned a fi. fa. residue may be added to the writ of ven. ex. as follows:

[And we also command you, that of the goods and chattels and lands and tenements of the said in your balliwick, you cause to be made the residue of the moneys and interest aforesaid; and have before our Justices aforesaid so much of such residue as you shall have made from said goods and chattels immediately after the execution hereof, and so much thereof as you shall have made from said lands and tenements immediately after the expiration of twelve months from the day of your receipt hereof, to be rendered to the said for the residue of the moneys aforesaid].

And in what manner you shall have executed this our writ make appear to our Justices aforesaid at Toronto, immediately after the execution hereof, and have there then this writ.

No. 117.

Writ of Possession.

Whereas lately by a judgment in this action dated _____, A. B. recorded [or E. F. was ordered to deliver to A. B.] possession of all and singular that _____ with the appurtenances in your bailiwick: Therefore, we command you that you enter the same, and without delay cause the said A. B. to have possession of the said land and premises with the appurtenances, and that you defend and keep him and his assigns in peaceable and quiet possession when and as often as any interruption may or shall, from time to time, be given or offered to him or them or any of them. Witness, etc.

[Where money or costs are also recoverable by the judgment, a writ of fieri facias may be combined with the writ of possession.]

No. 118.

Writ of Delivery.

We command you, that without delay, you cause the following chattels, that is to say [here enumerate the chattels recovered by the judgment for the return of which execution has been ordered to issue], to be returned to A. B. which the said A. B. by a judgment in this action dated _____, recovered against C. D. [or C. D. was ordered to deliver to the said A. B.] And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said C. D. by all his lands and chattels in your bailiwick, so that neither the said C. D. nor any one for him do lay hands on the same until the said C. D. render to the said A. B. the said chattels; and in what manner you shall have executed this our writ make appear to the Justices of our said Court at Toronto, immediately after the execution hereof, and have you there then this writ. Witness, etc.

No. 119.

Writ of Capias ad Satisfaciendum.

Whereas (insert if necessary any recitals which under the order may be proper).

We command you that you take C. D. if he shall be found in your bailiwick, and him safely keep so that you have his body before our Justices of our Supreme Court of Ontario immediately after the execution hereof to satisfy the sum of \$ _____, which by a judgment in this action dated _____, was adjudged to be recovered by A. B. against the said C. D. with the further sum of \$ _____, for the taxed costs mentioned in the said judgment and interest upon the said sum at the rate of 5 per centum per annum from the _____ and _____ respectively. And have you then there this writ. Witness, &c.

On a writ of Capias before judgment add this note.

N.B.—This writ is to be in force for two months from the date hereof and no longer.

No. 120.

Writ of Attachment for Contempt.

We command you to attach *C. D.*, notwithstanding any right of place he is in, so as to have him before our Justices in our Supreme Court of Ontario, immediately after the receipt hereof, then and there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf, and hereof fall not, by reason of any liberty, and bring this writ with you. Witness, &c.

No. 121.

Writ of Sequestration.

Whereas by a judgment in this action dated _____, it was ordered that the said *C. D.* should [pay into Court to the credit of the said action the sum of _____; *or as the case may be*]. Know ye, therefore, that we have given, and by these presents do give to you full power and authority to enter upon all the lands, tenements and real estate whatsoever of the said *C. D.*, and to collect, receive and sequester in your hands, not only all the rents and profits of his said lands, tenements and real estate, but also all his goods, chattels and personal estates whatsoever; and therefore we command you, that you do at certain proper and convenient days and hours, go to and enter upon all the lands, tenements and real estates of the said *C. D.*, and that you do collect, take and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said *C. D.* shall [pay into Court, to the credit of the said action, the sum of \$ _____ *or, as the case may be,*] and clear his contempt, and our said Court make other order to the contrary.

Witness, etc.

No. 122.

Writ of Assignment of Dower.

Whereas it has been made to appear to us in an action in our Supreme Court of Ontario that *C. D.* is the owner of (*describe the lands*) out of which dower is claimed by *A. B.*, and it has been adjudged by the judgment of our said Court bearing date the day of _____ A.D. 18 _____, that the said *A. B.* is entitled to her proper dower out of the said lands [and also to recover from the said *C. D.* the sum of _____ for damages for the detention of her dower.]

We therefore command you that without delay you do deliver to the said *A. B.* seisin of her third part of the said lands with the appurtenances. To hold to her in severalty by metes and bounds and that you do proceed in the execution in that respect of this our writ according to the provisions of "The Dower Procedure Act."

[*A fi. fa. for recovery of the damages and costs, if any, awarded by the judgment, may be combined with this writ.*]

No. 123.

Writ of Assignment of Dower where the right of Dower is acquiesced in by the owner of the estate.

Whereas, A. D., widow, who was the wife of C. D., deceased, demands against E. F. the third part of (*here describe the estate in which dower is claimed as in other writs of assignments of dower*) as dower. And whereas the said E. F. acquiesces in the said claim and is willing to assign to the said A. B. her proper dower, but that the said A. B. and E. F. are not agreed as to the admeasurement thereof. We therefore command you that, without delay, you do deliver the said A. B. seisin of her third part of the said lands and tenements with the appurtenances. To hold to her in severalty by metes and bounds; And that you do proceed in the execution of this our Writ, according to the provisions of "The Dower Procedure Act."

Witness, etc.

No. 124.

Certificate in lieu of return of writ as to goods.

A Writ of execution in this cause against the goods and chattels, lands and tenements of C. D., the above named Defendant (*or as the case may be*), to me directed, dated the _____ day of _____ 18____, issued from _____, is now in my hands.

I certify that I have this day indorsed on the above mentioned writ my return thereto as to goods and chattels as follows:—

(*Here insert the return as indorsed.*)

Dated, &c.

No. 125.

PETITIONS OF RIGHT.

Petition.

In the Supreme Court of Ontario.

To the King's Most Excellent Majesty.

The humble petition of A. B. (*stating Christian name and surname*) of _____, [by his solicitor, E. F., of _____], sheweth that (*stating with convenient certainty the facts entitling the suppliant to relief*). Your suppliant therefore humbly prays that, etc.

The suppliant proposes that the trial of this petition shall take place at the _____ of _____

Dated the _____ day of _____, A.D.

(Signed) _____ A. B.

or C. D., Counsel for A. B.

or E. F., solicitor for A. B.

(*Stating the usual place of abode of the suppliant, and, if he has a solicitor, the place of business of such solicitor.*)

Indorsement.

The suppliant prays for a plea or answer on behalf of Her Majesty within twenty-eight days after the date hereof, or otherwise, that the petition may be taken as confessed.

No. 126.

Notice to Appear to Petition.

To A. B.

You are hereby required to appear to the within petition in His Majesty's Supreme Court of Ontario within eight days, and to plead or answer thereto within fourteen days after the date of service hereof.

Take notice, that if you fail to appear or plead or answer in due time, the said petition may, as against you, be ordered to be taken as confessed.

No. 127.

*Petition of Right.**Certificate of Judgment for Petitioner.*

To the Honourable the Treasurer of Ontario,

Petition of right of A. B., in His Majesty's Supreme Court of Ontario.

I hereby certify that on the _____ day of _____ A.D. _____, it was by the said Court adjudged (or ordered) that the above-named suppliant was entitled to, etc.

Judge's signature.

No. 128.

Certificate of Taxation.

I certify that pursuant to [the judgment or order herein dated or the request of the Master in Ordinary or as may be] I have taxed the costs of the _____ at \$ _____

No. 129.

Mode of Marking Exhibits at the Trial.

In the Supreme Court of Ontario.

Smith v. Jones.

This Exhibit the (property of _____) is produced by the plaintiff (or defendant as the case may be), this _____ day of _____ 18 _____.

A. B.,

Registrar, Dep. Clerk, or Local Registrar.

No. 130.

Schedule of Exhibits.

In the Supreme Court of Ontario.

Smith v. Jones.

List of exhibits put in at the trial of this action at the day of _____ 18 _____.

At the trial of this action at Cornwall, the 4th May, 18 _____.

Plaintiff's Exhibits.

- (1) Patent.
- (2) Deed, Jones to Smith.
- (3) Bundle promissory notes (six in all).

Defendant's Exhibits.

- (4) Records of proceedings at Lodge of A. O. U. W.
- (5) Will of Arthur Brown.

Signature of Officer.

No. 131.

Form of Satisfaction Piece.

Satisfaction is acknowledged of the judgment against defendant in an action for \$ and costs. And do hereby expressly nominate and appoint solicitor to witness and attest execution of this acknowledgment of satisfaction.

Judgment entered on the day of

Signed by the said on the day of 1913, in the presence of the Supreme Court of Judicature for Ontario. And I hereby declare myself to be solicitor for and on behalf of said expressly named by and attending at request to inform of the nature and effect of this acknowledgment of satisfaction (which I accordingly did before the same was signed by me). And I also declare that I subscribe my name hereto as such solicitor.

(Signature)
the above named
plaintiff

(Signature).

No. 132.

BONDS, ETC.

Replevin Bond.

Know all men by these presents, that we, A. B. (*the plaintiff*) of W. G., of and J. S., of are jointly and severally held and firmly bound to W. P., Esquire, Sheriff of the County of in the sum of of lawful money of Canada, to be paid to the said Sheriff, or his certain attorney, executors, administrators or assigns, for which payment to be well and truly made we bind ourselves, and each and every of us in the whole, our, and each and every of our heirs, executors and administrators, firmly by these presents.

Dated this day of , one thousand eight hundred and

The condition of this obligation is such, that if the above bounden A. B. prosecute his action with effect and without delay against C. D. for the taking and unjustly detaining (*or unjustly detaining, as the case may be*) of his goods and chattels, to wit: (*here set forth the property distrained, taken or detained*), and do make a return

of the said property, if a return thereof shall be adjudged, and also to pay such damages as the defendant shall sustain by the issuing of the order of replevin if the said A. B. fails to recover judgment in his said suit, and further do observe, keep and perform all rules and orders made by the Court in the said action, [*where Rule 363 so requires add* and do indemnify and save harmless the defendant from all loss and damage which he may sustain by reason of the seizure of the said goods and chattels (*as the case may be*) and of any deterioration of the same in the meantime in the event of their being returned and all costs and expenses which the defendant may incur, including reasonable costs not taxable between party and party], then this obligation shall be void, or else remain in full force and virtue.

Sealed and delivered
in the presence of

Form of Assignment.

Know all men by these presents, that I, W. P., Esquire, Sheriff of the County of _____, have at the request of the within named C. D., the defendant in this cause, assigned over this Replevin Bond unto the said C. D., pursuant to the Rules of the Supreme Court of Ontario in that behalf.

In witness whereof, I have hereunto set my hand and seal of office this _____ day of _____, one thousand eight hundred and _____

Sealed and delivered }
in the presence of }

No. 133.

Verification of Return of Moneys paid into C. C. or Surrogate Court.

I hereby solemnly declare that the annexed statement is a full and true statement of the moneys paid into the Court (or Surrogate) Court of the County of _____, during the year 18____, and that it correctly shows the state of the various accounts therein mentioned upon the thirty-first day of December last.

(Signature) _____ A. B.
Clerk. or Registrar.

Subscribed and declared before me, at _____, this
day of January, 18____.

C. D.,
Commissioner for taking affidavits or
Justice of the Peace.

TARIFF "A."

TARIFF OF FEES TO BE ALLOWED SOLICITORS IN THE
SUPREME COURT.

1. For the institution of an action \$20 00

This item covers all costs except those of applications in Court or Chambers up to and including search for appearance.

2. Defence 10 00

This item covers the entry of appearance, but does not include any application in Court or Chambers.

3. Pleadings 25 00

This item covers all pleadings, affidavits on production, jury notices, etc., etc.

4. Third party notice or summons to party added by counter-claim 5 00

5. Record and entry for trial 5 00

6. Preparation for trial, including notice of trial, notices to produce and admit, subpoenas, and advising upon evidence 25 00

Subject to increase in the discretion of the Taxing Officer at Toronto to \$50.

7. Briefs at trial, per folio 10

8. Upon ex-parte motions in Chambers, including affidavits, etc. 15 00

9. Upon contested interlocutory Chambers motions 20 00

Subject to increase in the discretion of the Taxing Officer to a sum not exceeding \$30. (The Judge or Officer hearing the motion may fix any smaller sum.)

10. Ex-parte motions in Court 20 00

11. Contested interlocutory motions in Court ... 30 00

Subject to increase by the Taxing Officer to \$50.
(The Court may fix any smaller sum.)

12. Examinations, preliminary attendances, arranging, to cover all charges except Counsel fee;	
To the party examining	5 00
To the party examined	2 00
Counsel fee on examination;	
To the party examining	10 00
To the party examined	5 00

Subject to increase in the discretion of the Senior Taxing Officer at Toronto in special cases.

13. Counsel fee at trial, to	50 00
------------------------------------	-------

An increased Counsel fee and fee to junior counsel may be allowed in the discretion of the Taxing Officer at Toronto.

14. Solicitor attending trial where no second counsel employed	20 00
--	-------

If the trial lasts more than one day, then for each additional day, \$20.

15. Judgment, including attendance to hear judgment, drafting minutes, settlements and issue of the same, taxation of costs, etc.;	
To the party having the carriage of the order	10 00
To other parties	5 00

Subject to increase to \$15.

16. Correspondence pending suit, in the discretion of the Taxing Officer, up to	10 00
---	-------

17. On originating motion in Court, to the party moving, to cover all preliminary proceedings, notices, affidavits, services, etc.	20 00
---	-------

Subject to increase to \$40.

In Chambers	15 00
-------------------	-------

Subject to increase to \$30.

To a party appearing for preliminary proceedings	10 00
--	-------

Subject to increase when affidavits necessary to \$30.

In Chambers to \$25.

Counsel fee in the discretion of the Taxing Officer at Toronto.

Issuing order, etc., to the party having carriage	15 00
To other parties	5 00
18. Upon motions and originating notices for copies of affidavits properly served on opposite parties per folio	10
19. Fair copy of material correspondence in chronological order, for use of the trial Judge, when proper, per folio	10
Solicitor's attendances arranging for its admission by opposite party	2 00
Subject to increase to \$5.	
20. Upon appeals to the Appellate Division preliminary proceedings, to party appealing	25 00
To respondent	15 00
Counsel fees in the discretion of the Taxing Officer at Toronto.	
Issuing judgment or order, etc., etc.,	
To party having carriage	10 00
To the other party	5 00
21. References:	
Attending on reference, per hour	2 00
To be increased in the discretion of the Taxing Officer at Toronto to \$5 per hour, or a lump fee may be allowed for the whole reference.	
Drawing notices, affidavits and other documents necessary upon the reference, per folio	20
For each copy, per folio	10
For every ordinary attendance	50
Fee conducting sale	10 00
22. Signing default judgment	5 00
23. Commissions in addition to costs of motion ...	5 00

Reasonable fee to counsel and foreign agents attending execution of commission, not exceeding \$25, in the discretion of the Taxing Officer, or to be increased in the discretion of the Taxing Officer at Toronto.

24. Writs of execution, including disbursements . .	6 00
Renewals, including disbursements	4 00
25. On application to Taxing Officer at Toronto for increased counsel fees	5 00

(See Note on page 208.)

TARIFF OF FEES TO BE ALLOWED SOLICITORS IN COUNTY COURTS.

1. For the institution of an action	\$10 00
---	---------

This item covers all costs except those of application in Court or Chambers up to and including search for appearance.

2. Defence	5 00
----------------------	------

This item covers the entry of appearance, but does not include any application in Court or Chambers.

3. Pleadings	15 00
------------------------	-------

This item covers all pleadings, affidavits on production, jury notices, etc., etc.

4. Third party notice or summons to party added by counter-claim	3 00
--	------

5. Record and entry for trial	3 00
---	------

6. Preparation for trial, including notice of trial, notices to produce and admit subpoenas and advising on evidence	10 00
--	-------

Subject to increase in the discretion of the Judge, in cases involving more than \$200, to 25 00

7. Brief at trial, per folio (not to exceed \$5)	10
--	----

8. Upon ex-parte motion in Chambers including affidavits	5 00
--	------

9. Upon contested interlocutory Chambers motion	10 00
Subject to increase in the discretion of the Judge to a sum not exceeding (The Judge may fix any smaller sum.)	15 00
10. On ex-parte motions in Court	10 00
11. On contested interlocutory motions in Court..	15 00
Subject to increase in the discretion of the Judge to a sum not exceeding (The Judge may fix any smaller sum.)	30 00
12. Examinations:	
Preliminary attendances arranging for exam- inations, to cover all attendances except the counsel fee:	
To the party examining	3 00
To the party examined	1 00
Counsel fee on examination:	
To the party examining	5 00
To the party examined	3 00
Subject to increase in cases involving over \$200 in the discretion of the Judge to a sum not exceeding	10 00
13. Counsel fee at trial, up to	25 00
Subject to an increase in the discretion of the Judge, in cases involving \$200 or more, to a sum not exceeding	50 00
And in cases involving \$400 or more to a sum not exceeding	70 00
(In cases where the claim is not a money demand the Judge shall determine the amount involved.)	
14. Solicitor attending in Court when not counsel or partner of counsel, in cases involving over \$200	10 00
15. Judgment:	
To party having carriage	5 00
To other parties	3 00

This includes attendance to hear judgment, drawing and settling same, taxation of costs, etc.

16. Correspondence, not exceeding	5 00
17. On originating notices in Court:	
To party moving for preliminary proceedings, affidavits, notices, etc.	15 00
Subject to increase to, not exceeding	25 00
To party appearing for preliminary proceedings	5 00
Subject to increase when affidavits necessary to	15 00
Allowance for counsel fee in discretion of Judge, not exceeding	20 00
Issuing order to party having carriage	8 00
To other parties	3 00
18. Originating notices in Chambers:	
To party moving for preliminary proceeding.	10 00
Subject to increase to	20 00
To party appearing	5 00
Subject to increase when affidavits necessary to	10 00
Counsel fee in discretion of Judge.	
Issuing order, to party having carriage	8 00
To other parties	3 00
19. Upon motions, copies, affidavits properly served on opposite party, per folio	10
20. Upon appeals to a Divisional Court of the Appellate Division:	
Preliminary proceedings:	
To party appealing	15 00
To the respondent	10 00
Counsel fee in discretion of Senior Taxing Officer at Toronto, not exceeding	50 00
Issuing order, etc.:	
To party having carriage	8 00
To other parties	3 00
21. References:	
Attending on reference, per hour	1 00
Subject to increase to	2 00
Drawing notices, affidavits and other documents necessary upon the reference, per folio	20

For each copy, per folio	10
For every ordinary attendance	50
For conducting sale	10 00
22. Signing default judgment	3 00
23. Commission (in addition to costs of Motion) .	3 00
Attending on execution, foreign agents' fees, etc., in discretion of Judge.	
24. Writs of execution, including disbursements..	4 00
Renewals, including disbursements	3 00

NOTE.—Unless otherwise specified, the allowances in the above tariffs of solicitor's fees are exclusive of proper disbursements.

Upon taxation between a solicitor and his client, additional allowances may be made in the discretion of the officer taxing, but the exercise of such discretion shall be subject to review upon any appeal.

TARIFF "B."

TARIFF OF DISBURSEMENTS.

(Payable in stamps unless otherwise expressly authorized.)

On issue of writ	\$2 00
On entry of appearance	1 00
(Any number of defendants may appear at one time by the same solicitor without extra charge.)	
On every order except praecipe orders	1 00
On praecipe orders	50
On every judgment	2 00
(Including a certificate of the judgment of the Appellate Division.)	
Where a judgment or order is entered, per folio additional	10
(Where an order is required to be entered in more than one place—Rule 518—this fee shall be charged in the Local Office.)	
On setting down any motion	50
On setting down an appeal to the Appellate Division	2 00
On entering an action for trial:	
With a Jury (including Jury fee).....	6 00
Without a Jury	3 00
On certification of record	1 00

On every filing (except praecipes in the Accountant's office)	10
On any certificate	50
If over three folios, for every folio.....	20
On a direction to pay money into Court, or a cheque	30

(No stamp on cheques for less than \$10 or on directions to receive money paid on mortgages to the Accountant.)

Search: When action less than two years old	10
When action more than two years old	30
When made by the Official Guardian, no charge

(No charge shall be made for inspection of the books of the Accountant's Office.)

Amending pleadings	30
Writs, other than writs of summons	1 00
Taxations, party and party, including certificate of taxation	1 00

Taxations, solicitor and client, same fees as on a reference.

Comparing and certifying papers prepared by a solicitor: for each three folios	10
Making and certifying copies: per folio	10
Making up and forwarding papers	50

On References:

Appointments	50
Per hour while attending reference	1 50
Drawing report, per folio	20
Engrossing report	10
Fee (on first report in action only)	2 00
Oath	20
Depositions in infancy matters (no charge to be made for time): per folio	20

On quieting titles:

To Inspector (when petition referred to him); to cover all fees except filings	8 00
When petition referred to Referee, same fees as on a reference, and additional as follows:	
On each deed in the chain of title, other than satisfied mortgages.	50
Where title is possessory only	4 00
On certificate of title	4 00

On examination before Special Examiner:	
Appointment	50
Oath	50
Taking depositions, per hour	2 00
Copy for solicitor, per folio	10
Return	50
Certificate	50
Attendance when examination not proceeded with unless 24 hour's previous notice given	1 00
Attendance out of office, extra per mile	20
Crier:	
Calling case	60
Swearing witness or constable	20
Deputy Registrar; not paid by salary, and entitled on 1st September, 1913; so long as present officers retain office and are not paid by salary..	
Payable in cash:	
Swearing each witness	20
Marking each exhibit	20
Attending inspection of documents pro- duced	1 00
Commissioners. Payable in cash:	
Taking recognizance	50
Taking affidavits	20
Marking exhibits	10
Fees payable to witnesses, in both Supreme Court and County Court:	
To witnesses residing within three miles of the Court house, per diem	1 00
To witnesses residing over three miles from the Court house	1 25
Barristers and solicitors, physicians and sur- geons, other than parties to the cause, when called upon to give evidence in con- sequence of any professional service ren- dered by them, or to give professional opinions, per diem	4 00
Engineers, surveyors and architects, other than parties to the cause, when called upon to give evidence of any professional service rendered by them or to give evi- dence depending upon their skill or judg- ment, per diem	4 00

If witnesses attend in one case only, they will be entitled to the full allowance. If they attend in

more than one case they will be entitled to a proportionate part in each cause only.

The travelling expenses of witnesses, over three miles, shall be allowed, according to the sums reasonably and actually paid, but in no case shall exceed twenty cents per mile, one way.

FEES PAYABLE TO COUNTY COURT CLERKS.

1. Upon issue of Writ (in lieu of all fees heretofore payable by a plaintiff prior to Entry for trial or assessment, except those provided for by item 5)	\$3 00
2. Upon Entry of Appearance (in lieu of all fees heretofore paid by a Defendant, or third party, prior to entry of action for Trial or Assessment, except those provided for by item 5	1 00
(Any number of persons may appear at the same time by the same solicitor without extra charge.)	
3. Upon Entry of action or issue for Trial or Assessment:	
Non-jury case	3 00
Jury case	5 00
4. Upon Entry of Judgment (including Taxation of Costs)	3 00
5. Upon Examinations and References:	
Appointment	50
Not exceeding one hour	1 50
Additional per hour after first	1 00
Marking Exhibits, each	20
Copies of depositions per folio	10
For each oath	20
For each certificate	50
Drawing reports per folio	20
Engrossing reports per folio	10
6. On every writ of execution and renewal	1 00
7. Every certificate not otherwise provided for ..	50
8. Exemplification of judgment (including certificate and seal)	1 50
9. Every search not made in the ordinary course of an action, or made after the close of the action, if within three years	10
If made after that time	30
For copies of papers, per folio	10

10. On appeal from County Court to High Court (including making up and forwarding papers, preparing certificate and entry of judgment of Appellate Court)	2 00
Disbursements for express or postage to be added.	
11. For every subpoena in matters outside of actions such as in Municipal and Voters' List proceedings, etc., and all other proceedings in which a subpoena is issuable out of the County Court..	1 00
12. On all applications and proceedings before a County Court Judge, other than application in an action, not otherwise provided for, and upon all applications in an action after judgment	1 00
Where there is a trial or hearing upon oral evidence in any matter other than an action or issue, a further fee of.....	2 00

TARIFF "C."

FEES OF SHERIFFS.

	Supreme Court.	County Court.
1. Service on one party of any writ, subpoena, notice, pleading, or other paper, including receiving, filing, return, affidavit of service and one letter (exclusive of mileage); when more than one paper served at the same time it shall be considered as one service	\$3 00	\$2 00
2. Each additional party served	75	50
3. When writ returned without service being made	1 00	75
4. On writs of Fieri Facias and Ven. Ex and renewals thereof covering receiving, filing warrant and return and one letter (payable in advance; see 9. Edw. VII, c. 6, sec. 30)	2 00	1 50
5. Transmitting copy execution to Master of Titles (1 Geo. V, c. 29, sec. 62)....	1 00	50
6. Executing each order or writ relating to Arrest, Attachment, Absconding		

Debtor, Replevin, Sequestration, Possession, Hab. Fac. Pos., Escheat and Striking a Special Jury, and including receiving, filing return, preparing warrant, precept, bond and affidavits when necessary and other necessary attendances and including correspondence (exclusive of mileage, of poundage when chargeable, and of reasonable and necessary actual disbursements)	12 00	8 00
7. Poundage on executions and on attachments on the sum made; up to and including \$1,000, 6%; excess over \$1,000 and up to and including \$4,000, 3%; and on excess over \$4,000, 1½%. In County Court cases 5% on the sum made. (Exclusive of mileage and of all reasonable and necessary actual disbursements)		
8. Schedule made on the execution of any process, including copy for the debtor not exceeding 5 folios	1 50	1 00
9. Each folio above 5	20	20
10. Drawing advertisement and copies, including transmitting and posting	2 00	1 00
11. Every notice of sale or postponement thereof	25	25
12. For each day's attendance upon a view by a Jury (exclusive of mileage and reasonable and necessary disbursements)	5 00	3 00
13. Mileage from the Court house to the place where a paper is served, writ executed or other service performed (one way except in the case of an arrest, when mileage is both ways) per mile (see 9 Edw. VII, c. 6, sec. 30)	15	15
14. Every letter not above provided for and required by a party or his solicitor	50	30
15. Bringing up prisoner on attachment or Habeas Corpus besides travel at 20 cents per mile	2 00	1 50

16. Certificate of surrender by sureties	1 00	1 00
17. Where a Sheriff is directed by the Court to perform any service or do any act for which no fee is provided, he may be allowed such fee as the Court may think fit, and it shall be payable as the Court may direct (9 Edw. VII, c. 6, sec. 29)		
18. Every search for writs against one debtor not being by a party to a cause or his solicitor	30	30
19. When search embodied in a certificate including mailing to solicitor (It shall include any sales during the six months preceding its date.)	1 00	1 00
20. Maximum fee for a land certificate relating to the investigation of one title and in which shall be included all names required (see 9 Edw. VII, c. 6, s. 21)	4 00	4 00
21. On Trials	1 00	1 00
22. For notices, etc., upon seizure of stock, mortgages, and patents, additional . .	2 00	1 50
23. For Sheriff's deed or bill of sale	4 00	3 00
24. For schedule of distribution under Creditor's Relief Act.	2 00	1 00

TARIFF "D."

TARIFF OF FEES FOR WORK DONE IN ONTARIO UPON PRIVY COUNCIL APPEALS (IN ADDITION TO DISBURSEMENTS).

Giving security and obtaining its allowance	\$20 00
To respondent on allowance of security	10 00
Settling record	20 00
Supervising printing, etc., per folio	20
Transmission of record, etc.	5 00
Fees, drawing and settling case (Subject to increase in discretion of taxing officer in Toronto.)	50 00
Correspondence, etc.	10 00
Entry of certificate and taxation of costs	10 00

Note.—Tariffs A and D shall be used in all taxations after these Rules come in force.

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2. Writ for service out of Ontario.
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4. Indorsements of claim.
5. Specially indorsed writ.
6. Forms for appearance.
7. Notice of appearance.
8. Notice disputing amount claimed.
9. Notice limiting defence to part of land claimed.
10. Statement of claim.
11. Statement of defence.
12. Reply.
13. Statement of defence and counterclaim.
14. Reply to defence and counterclaim.
15. Special case.
16. Certificate of service of foreign process.
17. General form of affidavit.
18. Form of *jurat* in case of an illiterate person.
19. Affidavit of service of writ.
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21. Affidavit on production, when made by officer of corporation.
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25. Summons to party added by counterclaim.
26. Notice of payment into court.
27. Acceptance of sum paid into court.
28. Confession of defence arising pending action.
29. Confession in action to recover land.
30. Notice of discontinuance.
31. Notice to produce documents for inspection.
32. Notice to inspect documents.
33. Jury notice.
34. Notice of trial.
35. Notice of trial—Toronto non-jury sittings.
36. Notice of motion—court.
37. Notice of motion—chambers.
38. Notice to produce.
39. Notice to admit.
40. Indorsement on order adding parties.
41. Indorsement on judgment where parties added by master.
42. Indorsement on order adding party in master's office.
43. Notice to incumbrances to prove claim.
44. Notice to party by writ holding an incumbrance.
45. Notice to original defendants where incumbrancers added.
46. Advertisement for creditors.
47. Notice to creditors to produce vouchers.
48. Notice to creditor that claim allowed.
49. Notice to creditor to prove claim.
50. Notice to creditor that cheques may be applied for.
51. Reports on references.
52. Standing conditions of sale.
53. Report on sale.
54. *Subpæna ad testificandum* (general form).
55. *Subpæna duces tecum* (general form).
56. *Subpæna ad testificandum* for assize
57. *Subpæna duces tecum* for assize.
58. *Habeas corpus ad testificandum*.
59. Bench warrant for defaulting witness.
60. Commissioner to examine witnesses.
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63. Order changing solicitor.
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65. Order to tax solicitor's bill—solicitor's application.
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67. Court order, general form.
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70. Order for particulars.
71. Order dismissing for want of prosecution.
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73. Order for commission.
74. Order of reference.
75. Order of reference (another form).
76. Order to examine witnesses *de bene esse*.
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79. Garnishee order (final).
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81. Interpleader order (another form).
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86. Order of *withernam*.
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91. Judgment, default of appearance, recovery of land.
92. Judgment, default of defence, recovery of land.
93. Judgment, default of defence, recovery of land and damages.
94. Judgment, upon confession.
95. Judgment of *scisin* for dower.
96. Judgment, recovery of chattels.
97. Judgment, recovery unliquidated damages.
98. Judgment, after assessment of damages.
99. Judgment, for costs after confession of defence pending action.
100. Judgment, for costs after acceptance of money paid into court.
101. Judgment, mortgage action, reference.
102. Judgment, mortgage action, account taken.
103. Judgment, mortgage, action, redemption.
104. Judgment, general form for administration.
105. Judgment, for partition of sale.
106. Judgment, on motion in chambers.
107. Judgment, after trial.
108. Judgment, after trial (another form).
109. Judgment, on motion in court.
110. Judgment against a married woman.
111. Writ of *feri facias*.
112. Writ of *feri facias* against executor.
113. Writ of *feri facias* against married woman.
114. Writ of *feri facias* on order for costs.
115. Writ of *venditioni exponas*.
116. Writ of *venditioni exponas* and *fi. fa.* residue.
117. Writ of possession.
118. Writ of delivery.
119. Writ of *capias ad satisfaciendum*.
120. Writ of attachment for contempt.
121. Writ of sequestration.
122. Writ of assignment of dower.
123. Writ of assignment of dower where acquiescence.
124. Certificate in lieu of return.
125. Petition of right.
126. Notice to appear to same.
127. Certificate to Provincial Treasurer.
128. Certificate of taxation.
129. Mode of marking exhibits.
130. Schedule of exhibits at trial.
131. Satisfaction piece.
132. Replevin bond.
133. Return of money paid into Surrogate and County Court.