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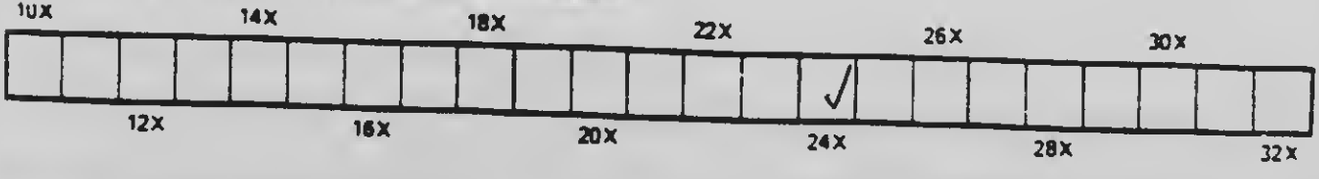

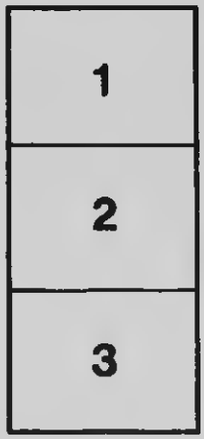

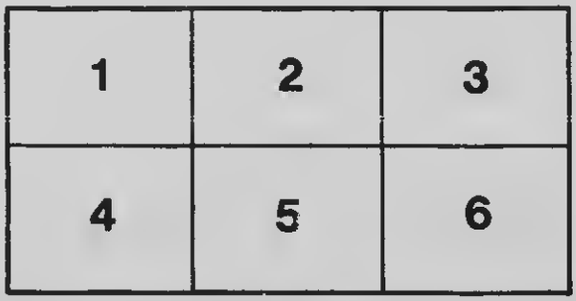

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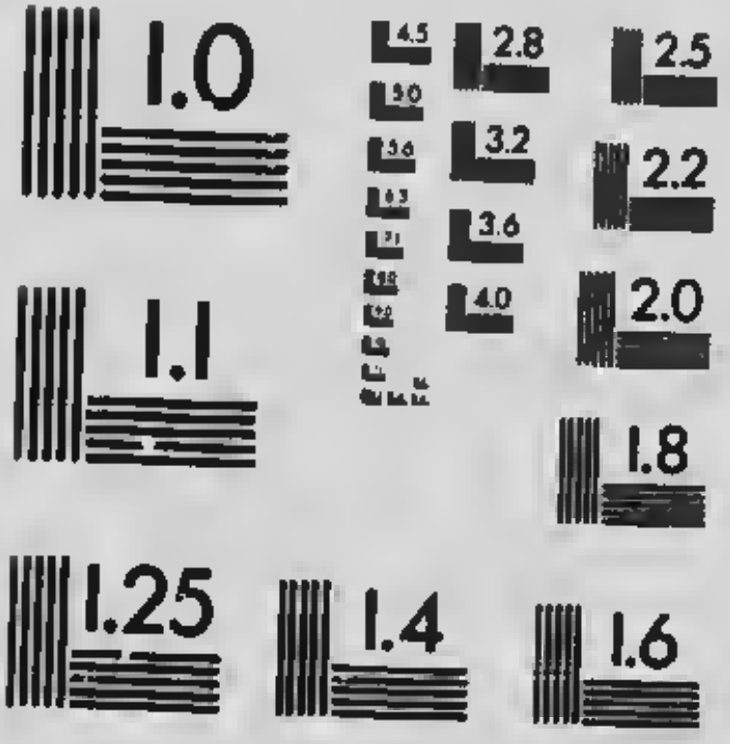

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A MANUAL

OF

COUNTY COURT PRACTICE

IN ONTARIO

COMPRISING THE STATUTES AND RULES RELATING TO THE POWERS AND DUTIES OF COUNTY AND DISTRICT COURT JUDGES, AND THE JURISDICTION, PROCEDURE AND PRACTICE OF THE

COUNTY AND DISTRICT COURTS OF ONTARIO

AND IN APPEALS THEREFROM TO THE

HIGH COURT

WITH CANADIAN AND ENGLISH DECISIONS, AND THE COUNTY COURT AND GENERAL SESSIONS TARIFFS, AND A NUMBER OF SPECIAL FORMS.

BY

M. J. GORMAN, K.C., LL.B.

OF OSGOODE HALL, BARRISTER-AT-LAW.

Second Edition

TORONTO:
CANADA LAW BOOK COMPANY, LIMITED
1910

PREFACE TO THE SECOND EDITION

DURING the eighteen years that have elapsed since the first edition of this book was issued, many important changes have been made in the jurisdiction of the county courts, not only increasing the amounts for which common law actions may be brought, but also restoring and increasing their equity jurisdiction, which had been taken away, as well as extending the jurisdiction to many other classes of cases. The law as to county court appeals has also been changed several times, and is now very much simplified. The various changes have been so numerous and important that they have necessitated the re-writing of practically the entire book. While the decisions have been very considerably added to, many of the former ones, as to jurisdiction and appeals, are no longer applicable to the changed conditions. Several unreported decisions of the high court upon matters of county court practice are also given.

The writer has felt that it would have been better if the Legislature had adopted the numerous suggestions made by the Bar and the press at various times during the past fifteen years, in favour of amalgamation of the county and division courts, so as to make them conform to the English model, which has been followed in all the other provinces possessing a county court system. The alternative reform of increasing the jurisdiction of the county courts, while preserving their intermediate nature, has, however, apparently appealed to the judgment of the Legislature as being more suitable to the conditions of this province. Though the long-expected revision of the Ontario statutes has not been completed, it is understood that those relating to the county courts have been, by the legislation of the sessions of 1909 and 1910, placed practically in the form in which they will appear when the revised statutes are issued. For some reason, however, only the portion of the County Courts Act relating to appeals was brought into force at once, the remainder of

the Act not coming into force until the first day of August, 1910.

It will be noticed that, in the last revision of the County Courts Act, some of the Consolidated Rules have been embodied therein, either in their original, or in a modified form. This is certainly a step in the right direction, but one does not clearly see why the revisers did not go further, and transfer into the Act all the other rules that apply only to county courts.

The extension of all the provisions of the County Judges Act and the County Courts Act to district courts has resulted in the repeal of the part of the Unorganized Territory Act, formerly applicable to the latter courts, except the sections which confer additional jurisdiction on the courts of certain districts. One may be permitted to express regret that the recommendation of the revisers in favour of complete assimilation was not adopted.

The General Sessions Act and the County Court Judges' Criminal Courts Act have been again included in the book, and also the county court tariffs. The tariffs for clerks of the peace and county Crown attorneys have been added, as well as several new forms prepared by the author, which it is hoped will be found useful to the profession.

Though the increased counsel fee of $50 under the present tariff is not technically applicable to cases coming under the latest additions to the jurisdiction, some at least of the judges have very properly held that it may be so applied. A word might be added as to the necessity for an immediate revision of the whole county court tariff, in consequence of the large number of important cases which have been transferred to that court from the high court by the recent changes.

The author bespeaks for this book the same generous treatment that was accorded to the former edition.

OTTAWA, May, 1910. M. J. GORMAN.

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ADDENDA.

Add to notes to clause (*h*), of sub-section 22(1), of the County Courts Act, at page 94: "See Curlette v. Vermilyea, 1 O.W.N. 693."

Add a similar note to section 30 of the above Act, at page 117.

In this action, the plaintiff sued the executor for a specific chattel bequeathed to her by the testatrix, but which she alleged the executor refused to deliver. An action was brought in the county court of York for the recovery of the article, and a motion was made before the master in chambers to transfer the action to the county court of Hastings, in which county the will had been proved. The master held that this action came within the provisions of the County Courts Act above referred to, and made an order transferring it to the county court of Hastings.

Drewry v. Percival, 1 O.W.N. 564, referred to at page 102, is now reported in 20 O.L.R., at page 489.

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THE COUNTY JUDGES ACT

9 EDW. VII. CHAPTER 29 (1909).

An Act respecting County and District Judges and Local Courts.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *"The County Judges Act."* R.S.O. 1897, c. 54, s. 1.

This Act was formerly called the Local Courts Act, and did not apply to judges of district courts, except in so far as the provisions of R.S.O. 1897, c. 109, known as the Unorganized Territory Act, made it specially applicable. Certain sections of the latter Act applied to district courts, which had a jurisdiction distinct from, and in several matters, in excess of the ordinary jurisdiction of the county courts. Some of those sections have now been repealed by section 48 of the County Courts Act, *infra*, and the latter

Act and this Act now apply generally to county and district courts. For some reason, however, sections 9 to 11 of the Unorganized Territory Act have not been repealed, so the jurisdiction and procedure in certain districts have not been completely assimilated. See notes to sub-section (1) of section 21, and section 48 of the County Courts Act, *infra*.

JUDGES AND JUNIOR JUDGES.

2. The judges of the several county and district courts now holding office, as well as the judges hereafter to be appointed, shall hold their offices during good behaviour, but shall be subject to be removed by the Lieutenant-Governor for inability, incapacity or misbehaviour, established to the satisfaction of the Lieutenant-Governor in Council. R.S.O. 1897, c. 54, s. 2. [*See also* R.S.C., c. 138, s. 28.]

A court of impeachment for the trial of charges against county court judges for inability or misbehaviour in office was established by 20 V. c. 58, which was afterwards consolidated by C.S.U.C., c. 14. C.S.U.C., c. 15, s. 2, gave the Governor power to appoint county court and junior county court judges, and section 3 declared that these judges "shall hold their office during good behaviour, but shall be subject to removal by the Governor for inability in case such inability or misbehaviour be established to the satisfaction of the court of impeachment for the trial of charges preferred against judges of the county courts." The Legislature of Ontario by 32 V. c. 22, sections 2 and 3, assumed to repeal these sections and to declare that county court judges "shall hold their office during pleasure, subject to be removed by the Lieutenant-Governor for inability, incapacity or misbehaviour established to the satisfaction of the Lieutenant-

Governor in Council." By 32 V. c. 26, the Legislature also assumed to repeal C.S.U.C., c. 14, and thereby to abolish the court of impeachment. By 33 V. c. 12, the words "good behaviour" were substituted for the word "pleasure" in chapter 22 of the statutes of the previous session, above referred to. These enactments were consolidated by R.S.O. 1877, c. 42, s. 2, and continued in R.S.O. 1887, c. 46, s. 2, R.S.O. 1897, c. 54, s. 2, and in the above section.

The constitutionality of this enactment came before the Queen's Bench Division in 1882, in Re Squier, 46 U.C.R. 474. Certain charges having been pref against Judge Squier, a Commission was issued under the Great Seal of Canada, directing the Commissioner to examine into the charges and report thereon. A motion was made for prohibition, and it was held that the Commission could not be supported at common law, because it created a c rt for hearing and inquiring into offences without determining them. It was also held that this inquiry into the conduct of a county court judge was regulated by C.S.U.C., c. 14, ss. 1 and 4, and that the tenure of office of a county court judge was still regulated by C.S.U.C., c. 15, s. 3, and that the attempt of the Legislature to repeal these sections, and to abolish the court of impeachment, was *ultra vires*. It is difficult to understand why, in view of the above decision, this section is still retained.

The Parliament of Canada, by 45 V. c. 12, abolished the court of impeachment above mentioned, and provided a new mode of procedure for the removal of county court judges. These provisions were afterwards consolidated by R.S.C. 1886, c. 138, s. 2, and are now embodied in the following section of R.S.C. 1906, c. 138:—

REMOVAL OF COUNTY COURT JUDGES.

28. Every judge of a county court in any of the provinces of Canada shall, subject to the provisions of this Act,

hold office during good behaviour and his residence within the county or union of counties for which the court is established.

2. A judge of a county court may be removed from office by the Governor in Council for misbehaviour, or for incapacity or inability to perform his duties properly, on account of old age, ill-health or any other cause; if,—

(*a*) the circumstances respecting the misbehaviour, incapacity or inability are first inquired into; and,

(*b*) such judge is given reasonable notice of the time and place appointed for the inquiry, and is afforded an opportunity, by himself or his counsel, of being heard thereat, and of cross-examining the witnesses and adducing evidence on his own behalf.

3. If any such judge is removed from office for any of such reasons, the Order in Council providing for such removal, and all reports, evidence and correspondence relating thereto, shall be laid before Parliament within the first fifteen days of the next ensuing session.

4. The Governor-General in Council may, for the purpose of making inquiry into the circumstances respecting the misbehaviour, inability or incapacity of such judge, issue a commission to one or more judges of the Supreme Court of Canada or any one or more judges of any superior court in any province of Canada, empowering him or them to make such inquiry and to report, and may, by such commission, confer upon the person or persons appointed, full power to summon before him or them any person or witnesses, and to require them to give evidence on oath, orally or in writing or on solemn affirmation, if they are persons entitled to affirm in civil matters, and to produce such documents and things as the commissioner or commissioners deem requisite to the full investigation of the matters into which they are appointed to inquire.

5. The commissioner or commissioners shall have the same power to enforce the attendance of such person or witness, and to compel him to give evidence, as is vested in any superior court of the province in which the inquiry is being conducted. R.S., c. 138, s. 2.

It is declared by section 34(4) of the Dominion Interpretation Act, that "'county court' in its application to the Province of Ontario, includes 'district court.'"

See also Re Squier, *supra*, as to other methods of procedure for the removal of county court judges.

The following provision is made by R.S.C. 1906, c. 138, as amended by 8-9 Edw. VII. c. 31, s. 1, for the salaries of county and district judges in this province:—

COUNTY COURTS.

16. The salaries of the judges of the county courts shall be as follows:—

Ontario.

The judge of the county court of the County of York, $3,500 per annum;

Seventy-one other judges and junior judges of county courts and district courts, each, $2,500 per annum during the first three years of service, and after three years of service, each, $3,000 per annum.

The travelling expenses of such judges are provided for as follows:—

TRAVELLING ALLOWANCES.

18. There shall be paid for travelling allowances to each judge . . of a . . county court . . , in addition to his moving or transportation expenses, the sum of six dollars for each day, including necessary days of travel going and returning, during which he is attending as such judge in

court or chambers at any place other than that at which he is by law obliged to reside: Provided that,—

(*a*) No judge shall receive any travelling allowance for attending in court or chambers at the place where he resides; and,

* * * * * *

(*c*) no judge of a county court shall receive any travelling allowance for courts or chambers held at the county town of the county, or union of counties, within which he resides.

* * * * * *

4. Each judge of a district court in Ontario shall receive a travelling allowance of five hundred dollars per annum.

5. Every application for payment of any such allowances shall be accompanied by a certificate of the judge applying for it of the number of days for which he is entitled to claim such allowance.

The same statute makes provision for the retirement and pension of county court judges, and also for the method of payment of salary and pension, as follows:—

COUNTY COURTS.

24. If any judge of a county court becomes afflicted with some permanent infirmity disabling him from the due execution of his office, and resigns his office, or if a judge of a county court, not having attained the age of seventy-five years, resigns his office after having continued therein for a period of at least twenty-five years, His Majesty may, by letters patent under the Great Seal of Canada, grant him a pension equal to two-thirds of the annual salary of which he was in receipt at the time of his resignation, to commence immediately after his resignation and to continue thenceforth during his natural life: Provided that if such judge has only continued in office as such judge for a period of less

than five years, the pension which may be so granted to him shall not, unless the judge has attained the age of seventy-five years, exceed one-third of the annual salary of which he was in receipt at the time of his resignation.

2. If any person, receiving a pension under this section, becomes entitled to any salary in respect of any public office under the Government of Canada, such salary shall be reduced by the amount of such pension. R.S., c. 138, s. 15; 2 Edw. VII. c. 16, s. 2; 3 Edw. VII. c. 29, s. 2.

25. Every judge of a county court who has attained the age of eighty years shall be compulsorily retired; and to any judge who is so retired, or who, having attained the age of seventy-five years, resigns his office, and in the latter case has continued in office for a period of twenty-five years or upwards, His Majesty may grant an annuity equal to the salary of the office held by him at the time of his retirement, or resignation.

2. The annuity in either of the cases mentioned in this section shall commence immediately after the judge's retirement or resignation and continue thenceforth during his natural life. 3 Edw. VII. c. 29, s. 2.

26. If any judge of a county court, after having continued in office for a period of thirty-five years, and become afflicted with some permanent infirmity, disabling him from the due execution of his office, resigns his office, His Majesty may, by letters patent under the Great Seal of Canada, grant to him a pension equal to the salary of his office at the time of his resignation, the said annuity to commence immediately after his retirement, and continue thenceforth during his natural life. 3 Edw. VII. c. 29, s. 3.

SALARIES AND ANNUITIES—HOW PAID.

27. The salaries and retiring allowances or annuities of the judges shall be payable out of any moneys forming part of the Consolidated Revenue Fund of Canada.

2. For any period less than a year, the salaries and retiring allowances or annuities shall be paid *pro rata*.

3. The salaries and retiring allowances or annuit shall be payable by monthly instalments and shall be free and clear of all taxes and deductions whatsoever imposed under any Act of the Parliament of Canada.

4. The first payment of salary of any judge shall be made *pro rata* on the first day of the month which occurs next after his appointment.

5. If any judge resigns his office or dies he or his executor or administrator shall be entitled to receive such proportionate part of the salary aforesaid as has accrued during the time that he has executed such office since the last payment. R.S., c. 138, s. 16; 4-5 Edw. VII. c. 47, ss. 1 and 2.

3. The person appointed to be the judge or junior judge of a county or district court shall be a barrister of at least seven years' standing at the Bar of Ontario. R.S.O. 1897, c. 54, s. 3; 62 V. (2), c. 11, s. 6.

This section has undergone several variations. In the Revised Statute of 1887, the term was five years. By 58 V. c. 13, s. 27, this was changed to ten years. Then by 63 V. c. 11, s. 6, the following proviso was added:—

"Provided that any person who has been a practising solicitor for five years before becoming a barrister may be appointed if of seven years' standing at the Bar of Ontario, and any person who has been a practising solicitor for ten years before becoming a barrister may be appointed if of five years' standing at the Bar of Ontario. Provided further that where in any county it is expedient by reason of the common use of two or more languages by the inhabitants thereof to appoint a judge who is conversant with more than one lan-

guage, a barrister who is so conversant may be appointed if of seven years' standing at the Bar of Ontario."

This proviso has disappeared in the revision, except that the term of seven years is now made generally applicable throughout the province, and is similar to the qualification in England.

Sections 96 and 97 of the B. N. A. Act are as follows:—

96. The Governor-General shall appoint the judges of the superior, district and county courts in each province, except those of the courts of probate in Nova Scotia and New Brunswick.

97. Until the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, and the procedure of the courts in those provinces, are made uniform, the judges of the Courts of those provinces appointed by the Governor-General shall be selected from the respective Bars of those provinces.

In the second edition of Clement's Canadian Constitution, at page 302, the following comments are made on the above legislation:—

"The question has been much canvassed as to the validity of provincial Acts prescribing the qualifications to be possessed by the judges mentioned in section 96, their place of residence, etc. Dominion Ministers of Justice have refused to be bound by such legislation, but there is no judicial decision on the point."

In November, 1905, the Dominion Government disallowed an Act of the British Columbia Legislature, which provided that judges appointed to the Bench of British Columbia must have resided in the province for a certain number of years. This was regarded as a usurpation of Federal power.

4. Unless otherwise expressed in the commission, where more than one judge of a county or district court is appointed for a county or district, the judge whose commission has priority of date shall be styled "The Judge of the County *or* District Court of " (as the case may be), and the other judge of the same court shall be styled "The Junior Judge of the County *or* District Court of " (as the case may be). R.S.O. 1897, c. 54, s. 4.

See section 7, *infra*, as to style where there are two or more junior judges.

5.—(1) A junior judge may be appointed for a county or district, the population of which exceeds 80,000.

(2) The recital in any commission heretofore or hereafter issued for the appointment of a junior judge that the population of the county or district for which he is appointed exceeds 80,000 shall be conclusive and shall not be open to question in any proceeding whatever. R.S.O. 1897, c. 54, s. 5.

(3) A junior judge may be appointed for a county in which a city is situate and for which county a junior judge was appointed prior to the 13th day of April, 1897, and for any of the counties of Grey, Renfrew, Leeds and Grenville, Stormont, Dundas and Glengarry, Prescott and Russell, Northumberland and Durham, Ontario, Bruce, Simcoe, Huron, Lambton and Victoria, including

Haliburton, and for the Districts of Algoma, Nipissing and Thunder Bay. R.S.O. 1897, c. 54, s. 5(5); 62 V. (2), c. 11, s. 38; 63 V. c. 17, s. 11; 2 Edw. VII. c. 12, s. 10; 3 Edw. VII. c. 7, s. 10.

6. Where any power or authority is, by this Act or otherwise, conferred upon or may be exercised by the judge of a county or district court, whether with reference to the holding of any of the courts of the county or district which he may hold, or to the business of any of such courts, or to any other matter or thing over which he has jurisdiction; the like power and authority shall be possessed and may be exercised by a junior judge, subject to the general regulation and supervision of the judge. R.S.O. 1897, c. 54, s. 14, *amended.*

7. A second junior judge and a third junior judge may be appointed for the County of York, who shall be called respectively the second junior judge and the third junior judge of the county court of the County of York. R.S.O. 1897, c. 54, s. 6, *amended.*

The arrangement of these sections is not happy, as section 6 should follow section 7, while the latter should have been made sub-section 4 of section 5.

In Elora Agricultural Insurance Co. v. Potter, 7 P.R. 12, it was held, where a reference was directed to "the judge of the County of Wellington," that the senior judge was the person referred to, and an appointment given by the junior judge to proceed with the reference was set aside.

In Biggar's Municipal Manual, p. 235, it is stated that the words "senior or officiating judge" in section 259 of the Municipal Act do not include a junior judge. In Reg. *ex rel.* McDonald v. Anderson, 8 P.R. 241, an application was made to set aside a writ of *quo warranto*, which had been issued on the fiat of the junior judge of the County of Wellington. The application was dismissed, but the question of the right of a junior judge to act does not appear to have been raised.

A junior judge of a county court is "a judge of a county court" within the meaning of the Extradition Act. Re Parker, 19 O.R. 512; Re Garbutt, 21 O.R. 179 and 465. See also R.S.C. 1906, c. 138, s. 2(*a*), and Speers v. Speers, 28 O.R. 188, *infra*, note to section 14.

8. Every judge and junior judge of a county or district court shall reside within the county or district for which he is appointed. R.S.O. 1897, c. 54, s. 7.

The provision of R.S.C., c. 138, s. 28, *supra*, are still more stringent, as they make the tenure of office conditional on residence within the county or union of counties for which the court is established, and as this condition is embodied in the patents issued to county judges, it is quite clear, according to Re Squier, *supra*, at page 491, that proceedings by *scire facias* might be taken to remove a judge who disregarded it.

9. A judge or junior judge shall not, directly or indirectly, practise as counsel or solicitor or act as a notary public or conveyancer under the penalty of forfeiture of office and the further penalty of $400. R.S.O. 1897, c. 54, s. 8.

In an action brought for the penalty under this section, the declaration alleged that defendant, being a judge, did in certain proceedings in the surrogate court prepare certain papers and documents to be used in said court, to wit, the petition of one G., etc. Defendant pleaded that he did not practice in the profession of the law as an attorney for said G., or as such attorney prepare any papers or documents to be used in said surrogate court. The evidence shewed that defendant prepared gratuitously for G., who was a widow in poor circumstances, the petition, bond and affidavits to enable her to obtain administration to her late husband:— Held, that the plea was proved, and a verdict was, therefore, entered for defendant on the leave reserved. Per Draper, C.J., of Appeal, and Morrison, J., the evidence did not bring defendant within the spirit of the Act, or the mischief against which it was directed, which was the doing of acts prohibited for profit. Allen q. t. v. Jarvis, 32 U.C.R. 56.

See section 12, *infra*, as to deputy judges being allowed to practice.

R.S.C., c. 138, contains the following additional prohibition against county judges engaging in any other business:—

JUDGES NOT TO ENGAGE IN BUSINESS.

33. No judge of . . any . . county court in Canada shall, either directly, or indirectly as director or manager of any corporation, company or firm, or in any other manner whatever, for himself or others, engage in any occupation or business other than his judicial duties; but every such judge shall devote himself exclusively to such judicial duties. 4-5 Edw. VII. c. 31, s. 7; c. 47, s. 3.

This does not, however, prevent a county judge from acting as arbitrator, though it was at first supposed it did, as does the English County Courts Act.

DEPUTY JUDGES.

10.—(1) A barrister of at least three years' standing at the Bar of Ontario may be appointed to be deputy judge for any county or district.

(2) The appointment may be made notwithstanding that the office of judge is vacant by death, or resignation, or that the judge is ill or absent at the time of the appointment. R.S.O. 1897, c. 54, s. 9.

This section is not to be confounded with section 4 of the County Courts Act, *infra*, which provides that, "In case of the illness or absence of the judge, the court may be presided over by a judge of any other county or district court or by one of His Majesty's counsel, upon the request of the judge or of the Attorney-General for Ontario." A deputy judge must be appointed, like any other judge, by the Governor-General in Council. See *re* Greenwood v. Buster, 1 O.W.R. 225. In that case a judgment of nonsuit had been pronounced by one Richard T. Walkem, sitting as county judge, at the request of the judge who was ill, but without the authority of a Commission as deputy judge or otherwise. The plaintiff moved before the judge to set aside the nonsuit, but the motion was dismissed with costs. Several years afterwards upon proceedings being taken to enforce the judgment for costs, the plaintiff moved for prohibition. It was argued for the defendant that the plaintiff was estopped from taking advantage of the irregularity, and the cases of Mayor of London v. Cox, L.R. 2 H.L. 239; Archibald v. Bushey, 7 P.R. 304; Robinson v. Cornwall, *Ib.* 297, were cited, also Shortt on Mandamus and Prohibition, p. 455. It was held by Meredith, J., that there was a total want of jurisdiction, and consent could not confer jurisdiction, and that the delay could make no difference. Reference

was made to Deadman v. Agriculture & Arts Association, 6 P.R. 176, and prohibition was granted, but without costs. In a similar unreported case of *re* Innis v. Gates, Rose, J., had previously granted prohibition under the same circumstances.

The law is different under the present English County Courts Act, which is more like section 4 of our County Courts Act, *infra*, and section 23 of our Division Courts Act: see Rex v. Lloyd, 75 L.J.Q.B. 126 and 406, and notes to next section.

11. A deputy judge shall hold office during pleasure, and in case of the death, illness, or absence of the judge, shall have authority to perform in the place of the judge, in the county or district for which he is appointed, all the duties of and incident to the office of the judge, and all acts required or allowed to be done by the judge under this or any other Act, unless therein otherwise expressly provided. R.S.O. 1897, c. 54, s. 10.

In Regina v. Fee, 3 O.R. 107, where the defendant was convicted of perjury committed at a division court held by a deputy judge under a Commission issued by the Governor-General in Council during the absence of the county judge on leave, it was held that it was not necessary for the Crown to prove the Order in Council granting the leave of absence, for its existence would be presumed, as well as the fact that the Commission was not effete by lapse of time, in accordance with the general presumption of law that a person acting in a public capacity was duly appointed and authorized to act. It was also held that the Commission was validly issued, and that it was not essential to enable the deputy judge to act, that the county judge should be absent from the county. See also McKenzie v. Dancey, 12 A.R. 317.

In Hoey v. Macfarlane, 4 C.B.N.S. 718, it was held that a deputy judge had no authority to deliver judgment after the expiration of the period for which he was appointed, or after the death of the judge who appointed him. Section 21 of the English County Courts Act of 1888, however, now provides that the appointment of a deputy judge shall not be vacated by the death or resignation of the judge, but the acts of the deputy judge after such death or resignation, shall be as valid as if the judge had not died or resigned. Section 18 of the same Act provides for the appointment being made by the judge himself, but the name of the deputy judge must be forthwith communicated to the Lord Chancellor. See also Rex v. Lloyd, 75 L.J.Q.B. 126 and 406.

12. Nothing herein contained shall prevent a deputy judge from practising the profession of the law. R.S.O. 1897, c. 54, s. 11.

In Reid v. Drake, 4 P.R. 141, where a deputy judge had declined on the ground, amongst others, that he was the partner of the plaintiff's attorney, to entertain an application by the defendant for his discharge from arrest under a capias, it was held that the deputy judge should have granted the application.

OATH OF JUDGES.

13. Every judge, junior judge and deputy judge before entering upon the duties of his office, shall take and subscribe the following oath before some person appointed by the Lieutenant-Governor to administer the same, that is to say:

"I , do swear that I will (*in the case of a deputy judge add the words* as occasion may require), truly and faithfully, according to my skill

and knowledge, execute the several duties, powers and trusts of judge of the county *or* district court of the county *or* district of , (*as the case may be*): So help me God."

R.S.O. 1897, c. 54, s. 12.

DUTIES AND POWERS OF JUDGES.

14.—(1) At any sittings of the county or district court held at the same time as the sittings of the court of general sessions of the peace, or of a division court in any county or district, or of any two of the courts at the same time, either the judge or the junior judge or both of them, may, if the judge thinks fit, preside in any of the said courts, or each of them in one of the said courts at the same time, so that two of the courts may sit and the business therein be proceeded with simultaneously.

(2) The county court of the County of York, the court of general sessions of the peace, and the division courts of the said county, or any of the said courts, may sit at the same time, and the business thereof may be proceeded with simultaneously. R.S.O. 1897, c. 54, s. 15.

Section 13 of the former Act, which provides that county court judges should be *ex-officio* justices of the peace, has been omitted from this Act, but section 3 of the Justices of the Peace Act provides that county and district court judges shall be justices of the peace for every county, district and part of Ontario.

Section 185 of the Judicature Act confers the following additional powers on county court judges:—

LOCAL JUDGES OF THE HIGH COURT.

185. Except in the County of York, the judges of the several county courts shall be judges of the high court for the purposes of their jurisdiction in actions in the high court; and in the exercise of such jurisdiction may be styled "local judges of the high court," and shall, in all causes and actions in the high court, have, subject to the rules of court, power and authority to do and perform all such acts, and transact all such business in respect to matters and causes in and before the high court as they are by statute or rules of court in that behalf from time to time empowered to do and perform. 58 V. c. 12, s. 185(1).

The following are the rules of court which regulate the proceedings before county court judges under the above section:—

45. (1) The judge of every county court other than the county court of York, shall in all actions brought, or proposed to be brought, 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, except that the authority of such judge shall not (except as provided by section 185 of the Judicature Act, 1895, or Rules 47 and 1127), extend to the payment of money out of court or dispensing with payment of money into court in any action or matter, or to making an order for the sale of infant's estates. Rules 29 Dec., 1894, 1386. See McKenzie v. Scott, 15 O.W.R. 342.

(2) Every local judge may refer any matter pending before him in Chambers to a judge of the high court for decision, and the judge may dispose of or refer back the same in whole or in part.

46. (1) A local judge of the high court may, in cases of emergency, grant an interlocutory injunction under sub-

section 8 of section 53, of the Judicature Act, 1895, (x) in any action in the high court brought in his county, on proof, to the satisfaction of the judge, that the delay required for an application to the high court is likely to involve a failure of justice; such injunction shall remain in force for a period not exceeding eight days as such local judge may direct, unless continued by the local judge under this rule or Rule 47, or by the high court; the injunction shall be by order to be signed, sealed and issued by the deputy clerk of the Crown, deputy or local registrar of such county, as the case may require, upon the direction or fiat of the local judge, and the injunction shall have the same force and effect and may be continued, varied, dissolved and otherwise dealt with by the high court as if it had been originally granted by judgment or order of the court. 52 V. c. 11, s. 1. See 58 V. c. 12, s. 185(2).

(2) In any action in which a local judge of the high court has granted an interlocutory injunction under the next preceding clause, and in which all parties interested consent thereto, the local judge may hear, determine and dispose of any motion to continue, vary, dissolve or otherwise deal with the injunction, including such terms and conditions as to costs and other like matters as the local judge sees fit. Rule 1419 of 1 Jan., 1896.

47. (1) A local judge of the high court shall, in actions brought and proceedings taken in his county, possess the like powers of a judge in the high court in court or chambers, for hearing, determining and disposing of the following proceedings and matters, that is to say:—

(*a*) Motions for judgment in undefended actions;

(*b*) Motions for the appointment of receivers after judgment by way of equitable execution;

(*c*) Applications for leave to serve short notice of motion to be made before a judge sitting in court or in chambers;

(*d*) Motions for judgment, and all other motions, matters and applications (except (i) trials of actions; (ii) applications for taxed or increased costs under Rule 1146; and (iii) motions for injunction other than those provided for by Rule 46) where all parties agree that the same shall be heard, determined or disposed of before such local judge, or where the solicitors for all parties reside in his county.

Provided always that where an infant or lunatic or person of unsound mind is concerned in any such proceedings or matters, the powers conferred by this rule shall not be exercised, in case of an infant without the consent of the official guardian, and in the case of a lunatic or person of unsound mind without the consent of his committee or guardian; and provided also the like consent shall be requisite in the case of applications for payment of money out of court and for dispensing with the payment of money into court, where an infant, lunatic, or person of unsound mind is concerned.

(2) No order for the payment of money out of court, or for dispensing with the payment of money into court, shall be acted upon unless a judge of the high court has manifested his approval thereof in manner provided by Rule 414.

(3) The judgment or order of the local judge in any of the proceedings or matters in this rule referred to shall be entered, signed, sealed and issued by the deputy clerk of the Crown, deputy or local registrar of the county, as the case may require, and shall be and have the same force and effect and be enforceable in the same manner as a judgment or order of the high court in the like case. Rule 1242 of 20th June, 1903.

48. Any person affected by a decision, judgment or order of a local judge under paragraph (2) of Rule 46 or clauses (*a*), (*b*) or (*d*), of Rule 47, may appeal therefrom to a judge of the high court 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. 56 V. c. 11, s. 1; 57 V. c. 20, ss. 11 and 13. See Rule 1, Jan., 1896, 1419. As amended by Rule 1243.

In Chisholm v. Herkimer, 19 O.L.R. 600, one of the local judges at London assumed to make an order under Rule 200, which provides that "in an action where there are numerous parties having the same interest, one or more of such parties may sue or be sued, or may be authorized by the court to defend on behalf of one or for the benefit of all the parties so interested." Upon this order a judgment by default was entered against several defendants, some of whom were not formally parties to the action. The latter subsequently filed a petition to set aside the judgment, and it was held by Riddell, J., that the local judge was not "the court" under Rule 200, and had no power to make an order thereunder. See also Cochrane Mfg. Co. v. Lemon, 11 P.R. 351, and Waterhouse v. McVeigh, 12 P.R. 676.

The jurisdiction of the master in chambers, conferred on county judges by Rule 45, is under Rule 42, as follows:—

42. The master in chambers, in regard to all actions and matters brought (or proposed to be brought) in the high court, including proceedings in the nature of a *quo warranto* under the Municipal Act, shall be, and hereby is, empowered and required to do all such things, transact all such business, and exercise all such authority and jurisdiction in respect to the same as are now done, transacted, or exercised by any judge of the said court sitting at chambers, save and except in respect of the matters following:—

1. All 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 the divisional court, or the court of appeal, before or after the time limited for that purpose has expired;

4. Applications to arrest;

5. Proceedings as to lunatics under the Revised Statutes of Ontario, 1887, c. 54, ss. 5, 6, 7, 8, 9, 17 and 18, and section 168 of the Judicature Act, 1895;

6. Applications for advice under the Revised Statutes of Ontario, 1887, c. 110, s. 37;

7. Applications as to the custody of infants under the Revised Statutes of Ontario, 1887, c. 137, s. 1;

8. Applications as to leases and sales of settled estates; to enable minors, with the approbation of the court, to make binding settlements of their real and personal estate on marriage; and in regard to questions submitted for the opinion of the court in the form of special cases on the part of such persons as may by themselves, their committee, or guardians, or otherwise, concur therein;

9. Proceedings as to partition and sale of real estate, under the Revised Statutes, c. 104;

10. Opposed applications for judgment for administration;

11. Opposed applications respecting the guardianship of the person and property of infants;

12. Applications for prohibition, mandamus or injunction;

13. The payment of money out of court, or dispensing with payment of money into court, in administration and partition matters;

14. Making an order for taxed costs in lieu of commission under the provisions of Rule 1146;

15. Striking out a jury notice except for irregularity;

16. Any matter which by these rules is expressly required to be done by a judge of the high court;

17. And (unless by consent of the parties) the following proceedings and matters, that is to say:—

(*a*) The removal of causes from inferior courts, other than the removal of judgments for the purpose of having execution;

(*b*) The making of orders for reference under the Arbitration Act;

(*c*) Reviewing taxation of costs;

(*d*) Staying proceedings after verdict, or on judgment after trial or hearing before a judge. Rules, 23rd June, 1894, 1287.

Sub-section 2 of Rule 142 provides that, "When a vacancy occurs in the office of local master, the judge of the county court for the county shall be the local master until and unless another person is appointed local master. In such case if there are two county judges, a senior and junior judge, both judges shall be local masters until and unless one of them or some other person is appointed sole local master."

The following are the provisions of the Surrogate Courts Act respecting the judges of that court:—

6. The judge, or in case there are two judges, the senior judge of a county court who was appointed as such judge prior to the 7th day of April, 1896, shall be *ex-officio* judge of the surrogate court for the county; and in case of the illness or absence or at the request of a judge of a surrogate court, or in case the office of senior judge is vacant, the junior or acting judge or the deputy judge (if any) of the county court, or any other judge of a county court who has authority to act as such in the same county, while so acting, shall have all the powers and privileges and perform all the duties of the judge of the surrogate court. R.S.O. 1887, c. 50, s. 6; 59 V. c. 20, s. 6.

(1) In case of the illness or absence of the surrogate judge where a person other than the judge of the county court is the judge of the surrogate court or upon his request

in writing to be filed with the registrar of the surrogate court, the judge or junior judge or deputy judge (if any) of the county court of the same county, or any other judge of a county court who has authority to act as such in the same county, may act as judge of the surrogate court, and while so acting shall have all the powers and privileges, and may perform all the duties of the judge of such surrogate court, unless otherwise directed by the Lieutenant-Governor in Council.

(2) Where a judge so acts for a surrogate judge he shall not be entitled to the fees unless with the consent of the surrogate judge. 61 V. c. 14.

(3) Where a judge of a county court who is also judge of the surrogate court vacates his county court judgeship, he shall thereby vacate his judgeship of the surrogate court. 3 Edw. VII. c. 7, s. 11.

In Speers v. Speers, 28 O.R. 188, it was held that a junior judge who had tried an issue in the surrogate court while the office of senior judge was vacant, had the right to deliver judgment in such case after a new senior judge had been appointed.

Section 22 of the Division Courts Act imposes the following duties upon the judges of the county courts:—

22. (1) The division courts shall be presided over by the county court judges or junior judges or deputy judges in their respective counties.

(2) The junior judges for the county shall (subject to any other arrangements from time to time made with the senior judge or made by the judges of a county court district which includes such county) preside over the division courts of the county.

(3) The appointment of a junior judge shall not prevent or excuse the judge of the county court from presiding at

any of the division courts within his county when the public interests require it. R.S.O. 1887, c. 51, s. 21.

By 9 Edw. VII. c. 49, s. 4, a judge of the county court may order a writ of attachment to issue in a high court case against the property of an absconding debtor. It was held in Disher v. Disher, 12 P.R. 518, that the county court judge has no power to set aside an order made by himself under this section. By 9 Edw. VII. c. 50, s. 3, a judge of a county court may make an order in the nature of a *ca. re.* in a high court action, as well as in his own court; and by Con. Rule 1047 he may set aside such order or order the defendant to be discharged out of custody. It was held in Elliott v. McCuaig, 13 P.R. 416, that a divisional court has power under this rule to be set aside or vary an order for arrest made by a county court judge in a county court action. This decision was followed by the divisional court in McVeain v. Ridler, 17 P.R. 353, and a subsequent application to the court of appeal for leave to appeal to that court was dismissed, the court holding that no appeal lay either with or without leave. By section 28 of the last mentioned Act a *ca. sa.* can be issued in the high court only on an order of a judge of that court where the defendant has not been previously arrested, or has been discharged. It was held in Waterhouse v. McVeigh, 12 P.R. 676, following Cochrane. Mfg. Co. v. Lemon, 12 P.R. 351, that a county court judge has not this power as a local judge of the high court. It was also held that a judge of the high court sitting in "single court" has power to set aside such an order. See also Chisholm v. Herkimer, 14 O.L.R. 600, where it was held that a local judge is not "the court" under Rule 200, and has no power to make an order thereunder.

15.—(1) It shall be competent for any judge of a county or district court to hold any of the courts

in any county or district or to perform any other duty as a judge of a county or district court in any such county or district upon being required so to do by an order of the Governor-General in Council made at the request of the Lieutenant-Governor.

(2) The judge of any county or district court may without any such order perform any judicial duty in any county or district on being requested so to do by the judge of the county or district court to whom the duty for any reason belongs. R.S.O. 1897, c. 54, s. 16 (*see* R.S.C. 1906, c. 138, s. 31, *part*).

(3) Any retired judge of a county or district court may hold any court or perform any other duty of a judge of a county or district court in any county or district on being authorized so to do by an order of the Governor-General in Council made at the request of the Lieutenant-Governor. R.S.O. 1897, c. 54, s. 17; (*see* R.S.C. 1906, c. 138, s. 32, *part*).

(4) The judge so required, requested or authorized as aforesaid shall, while acting be deemed to be a judge of the county or district court of the county or district in which he is so required or requested to act, and shall have all the powers of such judge. R.S.O. 1897, c. 54, s. 18; (*see* R.S.C. 1906, c. 138, s. 31(3)).

(5) In this section "Judge" shall include a junior judge.

The following further provisions are contained in R.S.C. 1906, c. 138:—

30. The jurisdiction of every county court judge shall extend and shall be deemed to have always extended to any additional territory annexed by the provincial legislature to the county or district for which he was or is appointed, to the same extent as if he were originally appointed for a county or district including such additional territory. 54-55 V. c. 28, s. 1.

31. It shall be competent to any county court judge to hold any of the courts in any county or district in the province in which he is appointed, or to perform any other duty as a county court judge in any such county or district, upon being required so to do by an order of the Governor in Council made at the request of the Lieutenant-Governor of such province.

2. The judge of any county court may, without any such order, perform any judicial duties in any county or district in the province on being requested so to do by the county court judge to whom the duty for any reason belongs.

3. The judge so required or requested as aforesaid shall, while acting in pursuance of such requisition or request, be deemed to be a judge of the county court of the county or district in which he is so required or requested to act, and shall have all the powers of such judge. 54-55 V. c. 28, s. 2.

32. Any retired county court judge of a province may hold any court or perform any other duty of a county court judge in any county or district of the province on being authorized so to do by an order of the Governor in Council, made at the request of the Lieutenant-Governor of such province; and such retired judge while acting in pursuance of such order shall be deemed to be a judge of the county or district in which he acts in pursuance of the order, and shall have all the powers of such judge. 54-55 V. c. 28, s. 3.

Quaere as to whether these sections authorize such judge or retired judge to sit in any other place than in the county in which he is so authorized to act. See cases cited *infra*, also section 16, *infra*.

By sub-section 14, of section 92, of the B. N. A. Act, the legislatures of each province may exclusively make laws in relation to the administration of justice in the province, including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts. By section 14 of chapter 25 of the Consolidated Statutes of British Columbia, a county court judge is authorized to act as such in certain cases in a district other than that for which he is appointed. The constitutionality of the latter Act came before the supreme court in 1892, in Re County Courts of British Columbia, 21 S.C.R. 446, when it was held, overruling Piel Ke-ark-an v. Reginam, 2 B.C.R. 53, that the power given by the B. N. A. Act included the power to define the jurisdiction of such courts territorially as well as in other respects, and also to define the jurisdiction of the judges who constitute such courts. It was also held that the Act was *intra vires* of the legislature under the above section of the B. N. A. Act. It was further held that the expression "any judge of a county court" in the Dominion statute respecting speedy trials, meant any judge having, by force of the provincial law regulating the constitution and organization of county courts, jurisdiction in the particular locality in which he might held "speedy trials," but the statute would not authorize a county court judge to hold a "speedy trial" beyond the limits of his territorial jurisdiction, without authority from the provincial legislature so to do. See now section 823 of the Criminal Code.

In Re McDonald and Town of Listowel, 6 O.L.R. 556, it was held, upon a petition under section 110 of the Ontario Registry Act for an order amending a plan, presented to

the judge of the county court of the county in which the land lay, and adjudicated upon at his request by the judge of another county, that the judge of such other county had jurisdiction, as to hear such a petition is one of the judicial duties to be performed by the judge of a county court in any case where application is made to him instead of to a judge of the high court, and that sub-section 2 of the above section 15 applied.

It was held in Nova Scotia, under a statute similar to our County Judges' Act, that a county judge sitting in Cape Breton County, had no jurisdiction to try a municipal election petition to set aside the election of a councillor for Richmond County. Catherine v. Morrison, 21 N.S.R. 291.

Similarly, in New Brunswick, where the county judge of St. John was called in by the county judge of Albert to try a case under the County Court Act, and, while sitting in chambers in St. John, issued a summons for a new trial, but afterwards discharged it on the ground that he had no power to act in St. John, it was held that the first summons was a nullity, and that he had power to issue a new summons in Albert. Steeves v. Lucas, 15 N.B.R. 70.

It has been held in Nova Scotia that the territorial jurisdiction of county court judges does not depend upon their commission, which are only descriptive of the tribunal over which such judges are appointed to preside, but upon the enactments of the provincial legislature, which may define, enlarge, and extend the districts within which the judges sit, as it sees fit. Crowe v. McCurdy, 18 N.S.R. 301.

In a more recent case in New Brunswick, it was held (per Weldon, Fisher and Wetmore, JJ., Allen, C.J., and Duff, J., dissenting), that section 1 of the Act 39 V. c. 5, intituled "An Act to establish Parish Courts," which section provides that the commissioners shall be appointed by the Lieutenant-Governor in Council, is not *ultra vires* of the local legislature. Ganong v. Bayley, 17 N.B.R. 324.

See also *Re* Wilson v. McGuire, 2 O.R. 118, and Gibson v. McDonald, 7 O.R. 401, *infra*, notes to section 19.

16. The Lieutenant-Governor in Council may empower a judge or junior judge of a county or district court to transact at such place out of his county or district to be named in the Order in Council as may be deemed proper, all such business depending in his court as may be transacted in chambers where the solicitors for all parties reside in the place so named or with the consent of the solicitors for all parties. 7 Edw. VII. c. 23, s. 32.

This curious piece of legislation may possibly be of some convenience where a judge is temporarily resident out of his jurisdiction for some necessary or reasonable purpose, and urgent matters arise during his stay in another place.

The following sub-section which was added by section 13 of the Statute Law Amendment Act, 1910, applies only to judges of district courts:—

16A. In lieu of the fees otherwise payable to him under the Surrogate Courts Act and for services performed under the Mechanics and Wage Earners Lien Act, the Woodmans Lien for Wages Act and the Act for Protecting the Public Interests in Rivers, Streams and Creeks there shall be paid to every judge and junior judge of a district court the sum of $500 per annum, and the fees heretofore payable in money under any of the said Acts shall be payable in stamps and shall form part of

the Consolidated Revenue Fund. 6 Edw. VII. c. 19, s. 16.

SHORTHAND WRITERS.

17.—(1) The Lieutenant-Governor may appoint a shorthand writer for the local courts of the County of York, and of any provisional judicial district.

(2) If the council of a county or the councils of a county and a city or town united with the county for judicial purposes and not within the jurisdiction of the county council, by resolution request the appointment of a shorthand writer for the local courts of the county, the Lieutenant-Governor may appoint a person to fill the office of shorthand writer for such courts.

(3) The shorthand writer so appointed shall be subject to the direction of the judge or in his absence of the junior judge or judges, and shall be entitled to such remuneration by salary or by fees or partly by salary and partly by fees as the Lieutenant-Governor in Council may direct.

(4) If such shorthand writer is paid by salary only, the fees payable in respect of his duties shall be applied in reduction of his salary, and the balance, if any, shall be paid by the county quarterly on the first days of January, April, July and October of every year.

(5) The fees and all matters relating to the duties of the shorthand writer shall be determined

and regulated by the judge of the county or district court subject to the approval of the Lieutenant-Governor in Council.

(6) The City of Toronto and every city and town aforesaid shall pay the county a proper proportion of the remuneration, which in case of disagreement shall be determined by arbitration according to the provisions of the Consolidated Municipal Act, 1903, and subject thereto, and unless and until the same is otherwise determined, the city or town shall pay to the county one-half of such remuneration. R.S.O. 1897, c. 54, ss. 27, 28.

The following are the fees fixed by Order in Council of 30th June, 1896, with reference to shorthand writers in local courts:—

(1) For single copies five cents per folio.

(2) For copies required for the judges under rules made or to be made in that behalf, and to be furnished at the expense of the parties, and for one copy for the party desiring to move thereon, six cents per folio of one copy for all the copies required of any one transcription of shorthand notes, not exceeding five altogether.

(3) For any additional copies made for the parties one and one-half cent per folio for each copy.

INTERPRETERS.

18. If the council of any county by resolution requests the appointment of an official interpreter to act at the courts held in that county, an appointment may be made in the same manner, and subject to the same terms and conditions as provided with

respect to shorthand writers by the next preceding section which shall apply as nearly as may be to official interpreters. R.S.O. 1897, c. 54, s. 26.

19.—(1) Chapter 54 of the Revised Statutes of Ontario, 1897, and all amendments thereto are hereby repealed.

(2) Notwithstanding the repeal of sections 19 to 28 of the said Act, any district or group formed under the provisions of the said section 19 and now existing shall continue to exist and the provisions of the said sections shall continue to apply to such district or group.

Sections 19 and 20 of the former Act, referred to in section 19(2) above, were as follows:—

COUNTY COURT DISTRICTS.

19. (1) Any part or parts of the province may, for the purposes of this Act, be divided into districts, or groups of counties, by proclamation of the Lieutenant-Governor, at such time or times as he may deem expedient; and such division shall take effect, and the districts thereby formed be erected and established, on such day after the first publication of the proclamation in the *Ontario Gazette* as the proclamation may name.

(2) The districts so erected may, from time to time be dissolved, re-established, altered or re-arranged by the Lieutenant-Governor by like proclamation; and the time when the dissolution, alteration or re-arrangement is to take effect may be named, proclaimed and published in the *Ontario Gazette* in like manner. R.S.O. 1887, c. 46, s. 17.

20. After the erection of a district for the purposes of

this Act, the several county courts, courts of general sessions, division courts, courts of appeal under the Assessment Act, courts for the revision of voters' lists and all other courts which a county judge may hold in each county, shall be held by the judges (including therein the junior judges) in the district, in rotation, as far as may in each district be just, convenient and practicable, in view of the respective ages, length of service, and strength of the several judges and the special duties assigned to junior judges, as well as in view of the other offices (if any) held by any of the judges, and all other circumstances. R.S.O. 1887, c. 46, s. 18.

Several groups of counties were established under these sections. An order having been made by the judge of the county court of the County of Lambton, sitting in a division court in the County of Middlesex, for the committal of a defendant, a motion for prohibition was made on the ground that that enactment was *ultra vires*:—Held, Armour, J., dissenting, that the provincial legislature has complete jurisdiction over the division courts, including the appointment of officers to preside over them; that the learned judge acted in the Middlesex division court as one of the persons designated by the legislature to preside over it, and having regard to the enactment in question, solely in its bearing on division courts, it was not *ultra vires*. In re Wilson v. McGuire, 2 O.R. 118.

In a subsequent case an application was made for a prohibition to restrain proceedings to enforce an order of the sessions of the County of Renfrew, which were presided over by the county judge of Lanark under the provisions of these sections, quashing a conviction with costs:—Held, per Armour and O'Connor, JJ., that the county judge of the County of Lanark had no power to preside at the sessions in the County of Renfrew, the above sections authorizing him to do so being *ultra vires*. Wilson, C.J., upon this point

gave no positive opinion, but inclined to the opposite view. Gibson v. McDonald, 7 O.R. 401.

In consequence of the latter decision, the judges in "grouped" counties have ceased to hold county courts in other than their own counties, and the writer is not aware of any group to which the above saving clause is of any practical application.

While the "grouping clauses" were being acted upon, the judge of a grouped county and the senior and junior judges of the adjoining grouped county, assumed to sit in term under these provisions, and to reverse a decision of the junior judge at the trial, but it was held that the judgment of a court so constituted was invalid, and that the verdict at the trial was not affected thereby. Ferguson v. McMartin, 11 A.R. 731. See also Borthwick v. Young, 13 A.R. 671.

THE COUNTY COURTS ACT

10 EDW. VII. CHAPTER 30 (1910).

An Act respecting the County Courts and District Courts.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *"The County Courts Act."* R.S.O. 1897, c. 55, s. 1.

2. There shall be in and for every county and district a court of record, to be styled in counties, the county court of the county (*or* united counties) of (naming the county or united counties) and in districts, the district court of the district of (naming the district). R.S.O. 1897, c. 55, s. 2.

These courts were originally established in Upper Canada, under the name of "district courts," and the various statutes from Geo. III. to 4 & 5 V. were consolidated by 8 V. c. 13. They have since undergone numerous changes, both in jurisdiction and procedure, and they occupy an intermediate position between the high court and the division courts. They were given a limited equity jurisdiction by 16 V. c. 119, which was subsequently taken away by the Law Reform Act, 32 V. c. 6, s. 4, but was restored and increased by the County Courts Act, 1896, 59 V. c. 19.

So far as the writer's knowledge goes, the Province of Ontario is the only place in the British Empire having three distinct civil courts of original jurisdiction, presided over by judges, and general in their character. The English county courts possess substantially the combined jurisdiction of our county and division courts, and the pleading, procedure and practice are somewhat similar to those of our division courts, with a sliding scale of court and solicitors' costs, according to the amount of the claim. The county and district courts in the other provinces of Canada have largely followed the English model.

JUDGES.

3. Subject to the provisions of the County Judges Act, the court shall be presided over by the judge or junior judge or by the acting or the deputy judge. R.S.O. 1897, c. 55, s. 3.

See notes to section 14 of the County Judges Act, *ante*, as to the duties and powers of county and district judges.

9 Edw. VII. c. 43, s. 30, provides as follows:—

30. (1) All courts, judges, justices, masters, clerks of courts, commissioners, and other officers acting judicially, shall take judicial notice of the signature of any of the judges of any court in Canada, in Ontario, and in every other province and territory in Canada, where such signature is appended or attached to any decree, order, certificate, affidavit, or judicial or official document. R.S.O. 1897, c. 73, s. 30, part.

In Timmins v. Wright, 45 U.C.R. 246, it was held, that a county judge's order to arrest was well proved, under R.S.O. 1877, c. 62, s. 28, by the production of a copy certified as such, under the hand of the clerk of the court; but that the affidavit on which the capias issued, filed in that court, was not duly proved by the production of a copy of the affidavit similarly certified, and with a seal attached, apparently that of the court, but not referred to or described in the certificate.

4. In case of the illness or absence of such judges the court may be presided over by a judge, of any other county or district court, or by one of His Majesty's counsel learned in the law, upon the request in writing of the judge or of the Attorney-General for Ontario. R.S.O. 1897, c. 55, s. 4.

See notes to section 10 of the County Judges Act, *ante*.

While a deputy judge, under that section, must be appointed by the Governor-General in Council, the judge himself may, under this section, and for either of the reasons therein mentioned, appoint one of the persons named therein as a temporary substitute, for the purpose of holding a

particular sitting of the court, but not to perform any other duties.

5. Every such court shall be provided with a suitable seal to be approved of by the Lieutenant-Governor in Council. *New.*

CLERKS.

6. There shall be a clerk of every such court, who shall be appointed by the Lieutenant-Governor in Council and shall hold office during pleasure. R.S.O. 1897, c. 55, s. 5.

The following are sub-sections of section 143 of the Judicature Act:—

(3) Except in the County of York, the several clerks of the county courts shall be *ex-officio* deputy clerks of the Crown and pleas of the high court for their respective counties, unless the offices of deputy clerk of the Crown and deputy registrar are consolidated under sub-section 5.

(4) Where a county court judge is the local master, the county court clerk shall be the deputy registrar.

Con Rules 1212 and 1213 are as follows:—

1212. 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. Con. Rules 227, 1253.

1213. The county courts may issue writs of subpœna *ad testificandum*, to enforce the attendance of any witnesses resident within Ontario, and also writs of subpœna *duces tecum*, to enforce the attendance of and of the production of deeds and papers by any such witnesses; and may proceed against persons who, having been duly served with the

subpœna, disregard or disobey the same, with the same powers, in like manner and by the same mode of proceeding as belongs to and is practised in the high court. Con. Rule 1254.

7. The clerk shall give security for the due performance of the duties of his office in such sum and in such manner and form as the Lieutenant-Governor in Council may direct. R.S.O. 1897, c. 55, s. 6.

9 Edw. VII. c. 5, s. 8, provides as follows:—

8. (1) Security by or on behalf of every person appointed to any office or employment, or commission in the public service of Ontario, or to any office or employment of public trust, or wherein he is concerned in the collection, receipt, disbursement or expenditure of any public money under the Government of Ontario, and by reason thereof is required to give security, shall be furnished within one month after notice of his appointment, if he is then in Ontario, or within three months, if he is then absent from Ontario (unless he sooner arrives in Ontario, and then within one month after such arrival), in such sum and in such manner as may be approved of by the Lieutenant-Governor in Council or by the principal officer or person in the office or department to which he is appointed, for the due performance of the trust reposed in him and for his duly accounting for all public moneys entrusted to him or placed under his control.

9. The Lieutenant-Governor in Council may prescribe the form of the security required to be furnished under any statute by a public officer or by any class of public officers, and may authorize the treasurer of the province to enter into agreements in His Majesty's name with any corporation authorized to carry on the business of fidelity insurance in the Province of Ontario for the furnishing of security for

any public officer, or for public officers generally, or for any class or classes of public officers. *New.*

8.—(1) The clerk shall keep his office in the Court House or, if there is no room available therein, then at such place in the county or district town as the judge may direct.

(2) The clerk of the county court of the County of Essex may keep an office in some convenient place in the City of Windsor, subject to such arrangements as the county council of the County of Essex may assent to, and subject also to the approval of the Lieutenant-Governor in Council. R.S.O. 1897, c. 55, s. 7.

The Consolidated Municipal Act contains the following section:—

506. (1) The county council shall have the care of the court house and of all offices and rooms and grounds connected therewith, whether the same forms a separate building or is connected with the gaol, and shall have the appointment of the keepers thereof, whose duty it shall be to attend to the proper lighting, heating and cleaning thereof; and they shall from time to time provide all necessary and proper accommodations, fuel, light, [stationery] and furniture for the courts of justice other than the division courts, and for the library of the law association of the county (such last mentioned accommodation to be provided in the court house), and shall provide proper offices, together with fuel, light [stationery] and furniture, for all offices connected with such courts other than (1) officers of the Maritime Court of Ontario (not being in the County of York), and (2) official assignees. 55 V. c. 42, s. 466; c. 43, s. 36; 60 V. c. 3, s. 3.

In an action brought under this section before the word "stationery" had been inserted therein, it was held that "furniture" must include everything necessary for the furnishing of the offices referred to in the enactment, for the purpose of transacting such business as might properly be done in such offices; and the word therefore included stationery and printed forms in use in the courts.

It was held also, upon the facts of this case, that a local officer of the courts, who ordered supplies of stationery and forms from the plaintiffs for his office, was duly authorized by the defendants' council to do so, pursuant to the provisions of section 470 of R.S.O., c. 184. Newsome *et al.* v. County of Oxford, 28 O.R. 442.

Pursuant to this decision, the Statute Commissioners inserted the word "stationery," where it now appears as above, in the revision of the statutes in 1897.

It was subsequently held in the case of Mitchell v. Pembroke, 31 O.R. 348, that a municipal corporation is liable to the police magistrate for a claim for stationery although extending beyond a year.

In re Local Offices of the High Court, 12 O.L.R. 16, it was held by Boyd, C., that the office of local master is an office within the meaning of the above section, but that the words "stationery and furniture" do not extend to law books and text books.

In the recent case of Rodd v. County of Essex, 19 O.L.R. 659, it was held by the court of appeal, reversing Falconbridge, C.J., that the defendants were not liable for any portion of office rent for the clerk of the peace at Windsor, as there is no provision in his case, similar to that contained in the above proviso, for keeping an office in any place but the county town.

9. Except on holidays and subject to rules of court as to office hours during vacations, the office

of the clerk shall be kept open from 10 o'clock in the forenoon until 4 o'clock in the afternoon, except on Saturday, when the office shall be kept open until 1 o'clock in the afternoon. R.S.O. 1897, c. 55, s. 8.

Con. Rule 1220 is as follows:—

1220. Every clerk of a county court shall keep his office open for the transaction of business on every day except holidays, and except as hereinafter provided, from the hour of 10 in the forenoon to the hour of 4 in the afternoon, and in Toronto on Saturdays from 10 in the forenoon till 1 in the afternoon. On and between the 1st day of July and the 31st day of August, and on and between the 24th day of December and the 6th day of January, the clerk shall keep his office open for the transaction of business from 10 in the forenoon until noon. Con. Rule 1261, amended; 60 V. c. 14, s. 89.

See also Con. Rule 9 as to closing of offices of the high court at Toronto and Ottawa at 1 p.m. on Saturdays.

In *re* MacKay v. Goodson, 27 U.C.R. 263, it was held that a clerk of the county court being also *ex-officio* deputy clerk of the Crown and clerk of assize, is privileged from arrest only when engaged in his official duties, or while going to or returning from his office.

10. The clerk shall, whenever required so to do by the Crown Attorney, and at least once in every three months, deliver to him, verified by the affidavit of the clerk, a full account in writing of all fines levied by order of the court. R.S.O. 1897, c. 55, s. 9.

9 Edw. VII. c. 5, contains the following provision as to return of fees:—

15. Every clerk of a county court, every registrar of a surrogate court, and every clerk of a division court for a division embracing a city or part of a city, shall keep a separate book, in which he shall enter from day to day all fees, charges, and emoluments received by him by virtue of his office, shewing the sums received by him for fees, charges and emoluments of all kinds whatsoever, and shall on or before the 15th day of January in each year make up a statement under oath of such fees, charges and emoluments to and including the 31st day of December of the previous year and return the same to the provincial secretary. R.S.O. 1897, c. 16, s. 30.

16. Every public officer who is by this or any other Act required to make a return of the fees and emoluments of his office to any department of the Government, or to any officer, shall include in his return the following particulars:

(*a*) The aggregate amount of all fees and emoluments earned by him during the preceding year by virtue of his office;

(*b*) The aggregate amount of all fees and emoluments actually received by him during the preceding year by virtue of his office;

(*c*) The actual amount of the disbursements during the same period in connection with his office, and such other particulars as the Lieutenant-Governor in Council may prescribe. R.S.O. 1897, c. 16, s. 29. Amended.

The Public Officers' Fees Act, 1910, provides for the emolument of county court clerks as follows:—

4. (1) Every local registrar of the high court, deputy clerk of the Crown, clerk of the county court and registrar of the surrogate court shall be entitled to retain to his own use in each year his net income up to $2,500.

(2) Of the net income of each year over $2,500, he shall pay to the provincial treasurer the following percentages:—

(*a*) On the excess over $2,500, up to $3,000, ten per cent. thereof;

(*b*) On the excess over $3,000, up to $3,500, twenty per cent. thereof;

(*c*) On the excess over $3,500, up to $5,000, fifty per cent. thereof. R.S.O. 1897. c. 18, s. 3, amended.

(*d*) On the excess over $5,000, ninety per cent. thereof.

The Bills of Sale and Chattel Mortgage Act, R.S.O. 1897, c. 148, imposes the following additional duties on clerks of county courts:—

15 (1) The instruments mentioned in the preceding sections shall in counties be registered in the office of the clerk of the county court of the county or union of counties where the property so mortgaged or sold is at the time of the execution of such instrument; and every such clerk shall file all such instruments presented to him for that purpose, and shall indorse thereon the time of receiving the same in his office. 57 V. c. 37, s. 11.

16. The said clerks respectively shall number every such instrument or copy filed in their offices, and shall enter in alphabetical order in books to be provided by them, the names of all the parties to such instruments, with the numbers indorsed thereon opposite to each name, and such entry shall be repeated alphabetically under the name of every party thereto. 57 V. c. 37, s. 12.

42. (1) Every clerk with whom instruments are required to be registered under the provisions of this Act, shall on or before the 15th day of January in each year, transmit to the Minister of Agriculture returns which shall set out:—

(*a*) The number of chattel mortgages and renewals, the number of discharges, and the number of assignments for the benefit of creditors on record and undischarged in the office of such clerk on the 1st day of January, in the year preceding that in which the return is made;

(*b*) The number of chattel mortgages and renewals, the number of discharges, and the number of assignments for the benefit of creditors registered in such office during the year following the said 1st day of January, and

(*c*) The number of chattel mortgages and renewals, the number of discharges, and the number of assignments for the benefit of creditors on record and undischarged in the said office on the 31st day of December in said year.

(2) The returns shall not include instruments which have lapsed by reason of non-renewal.

(3) The chattel mortgages and renewals and discharges, and assignments for the benefit of creditors in the said returns shall be classified according to the several occupations or callings of the vendors or mortgagors or assignors as stated in the instruments, and shall shew the aggregate sums purporting to be secured thereby respectively.

(4) The returns shall, where practicable, distinguish mortgages to secure future indorsations or future advances from mortgages to secure an existing debt or a present advance. 53 V. c. 12, s. 7.

11. The clerk shall tax costs, subject to an appeal to the judge. R.S.O. 1887, c. 55, s. 10.

This does not apply to costs of appeals to the divisional court, which are taxed by the taxing officer in Toronto on the high court scale, except that, by item 150 of the present tariff, the counsel fee is limited to $25, on such appeals.

The scale of costs taxable is provided for by the following rules:—

1132. Where an action of the proper competence of a county court is brought in the high court, or an action of the proper competence of a division court is brought in the

high court, or in a county court, (*a*) 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. Con. Rule 1172. Rules November, 1893, 1275. See Ross v. Townsend, 1 O.W.N. 457.

1133. In every case in which judgment is entered without trial, or the decision of a court or a judge, or order as to the costs, and where the amount of, or relief awarded by, the judgment, *primâ facie*, appears to be within the jurisdiction of an inferior court, the taxing officer shall not tax full costs of the high court, without proof on affidavit to his satisfaction that the action was properly instituted therein; and if properly within the competence of the county, or division court, then the taxation shall be on the scale of fees in such court. Con. Rule 1174.

The following rules govern appeals from taxation:—

1182. (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 items objected to, and may thereupon apply to the taxing officer to review the taxation in respect of the same. Con. Rule 1230.

(2) The taxing officer shall hold the taxation open for a reasonable time in order to allow such objections to be delivered. Rules 22nd June, 1894, 1374.

1183. Upon the application the taxing officer shall reconsider and review the 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. Con. Rule 1231.

773. An appeal from the report or certificate of an officer to whom the taxation of solicitor's bill under Rules 1184 to 1186 inclusive has been referred, shall lie and may be brought in the same manner as in the case of a report of a master. *New.*

774. In cases to which Rule 773 does not apply, a party dissatisfied with the certificate of a taxing officer may apply to a judge in chambers to review the taxation as to any item or part of an item, which has been objected to as provided by Rules 1182 and 1183; but the certificate of the taxing officer shall be final and conclusive as to all matters which have not been objected to in manner aforesaid. Con. Rule 851.

775. No appeal under Rule 774 shall lie unless a notice thereof is given within 4 days from the day of the date of the certificate and the appeal brought on for argument within 10 days from the said day. Con. Rule 852. Rules 23rd June, 1894, 1358.

776. The appeal shall be heard by the judge upon the evidence which was brought in before the taxing officer, unless otherwise ordered. Con. Rule 853.

In an unreported decision of MacMahon, J., on March 8th, 1894, in the case of Waterloo Mfg. Co. v. Hoare, it was held, on an attempted appeal by the defendants from the

taxation of their costs by the clerk of the county court of Waterloo (in which court the action was brought, though it had been tried in the high court), that he had no authority to make an order at all. On the 16th of the same month, an application was made in the same case to the court of appeal for leave to appeal from a ruling or decision of the judge of the county court upon a question arising on the taxation of the costs, but the motion was dismissed.

In a subsequent unreported decision of a divisional court, in the case of Routledge v. Graham, on September 14th 1897, an attempt was also made to appeal from an order of the junior judge of the County of Middlesex, made upon an appeal from the clerk's taxation of the costs, but it was held that no appeal lay.

In Kreutziger v. Brox, 32 O.R. 418, an appeal as to the scale of costs in a county court action was entertained by the divisional court, and the decision of the court below was reversed. See also Babcock v. Standish, 19 P.R. 195. This decision was not followed in McCormick Harvester Machine Co. v. Warnica, 3 O.L.R. 427, but in neither of these cases was the question apparently raised as to the right of appeal. In Leonard v. Burrows, 7 O.L.R. 316, however, the point was squarely raised, and it was held that an order made by a judge of the county court in a county court action, dismissing an appeal from a ruling as to the scale of costs upon taxation of the plaintiff's costs of the action awarded by the judgment, is in its nature interlocutory and not final within the meaning of sub-section 1(*c*), of section 40, *infra*. In consequence of this decision, the present sub-section 1(*d*) of section 40, *infra*, was passed in 1904, expressly providing for an appeal in a case of this kind.

By section 16(5) of the Costs of Distress Act, 9 Edw. VII. c. 46, the clerk of the county court is empowered to revise the taxation by the clerk of the division court, of the

costs of a distress, where the portion in dispute amounts to $10 or upwards.

By section 32 of the Act respecting Mortgages of Real Estate, R.S.O. 1897, c. 121, power is given to the clerk of the county court to tax the costs of exercising the power of sale in a mortgage.

By section 460 of the Consolidated Municipal Act, 1903, the costs of arbitrators under that Act may be taxed by the clerk of the county court, subject to a revision by one of the taxing officers at Toronto.

By section 106 of the Municipal Drainage Act, R.S.O. 1897, c. 226, the referee may direct the taxation of the costs by the clerk of the county court with whom the papers are filed.

It would seem that there is no appeal from the taxation by the clerk in cases of this kind, since he does not act as an officer of the court, but as a person designated by statute, except where the statute itself provides for an appeal. See Mahon v. Nicholls, 31 U.C.C.P. 22, and cases cited at page 28. This question was raised in a drainage case in Fewster v. Township of Raleigh, 15 C.L.T. 137, but was not decided. See, however, Crooks v. Township of Ellice, 16 P.R. 553.

Con. Rule 1167 provides for the revision by one of the taxing officers at Toronto of all bills of costs in cases for the foreclosure, redemption or sale of mortgaged premises. It is stated in Cameron's Principles of the Law of Costs, at page 69, that in actions of this kind in the county court, under clause (*f*) of section 22(1), *infra*, it has been held by the Chancellor, Meredith, C.J., and Rose, J., that the above rule does not apply, and that such revision is, therefore, unnecessary.

The clerk may be compelled by mandamus to perform the several duties of his office under this and other sections, as well as under the general practice of the courts. *Re*

Linden v. Buchanan, 29 U.C.R. 1; *Re* Oliver v. Fryer, 7 P.R. 325; *Re* Great Western Advtg. Co. v. Rainer, 9 P.R. 494.

Among other powers of county court clerks, it is provided by Con. Rule 900(2), that examinations of judgment debtors may be taken before the clerk of the county court in county court cases, but for some reason, no similar provision has been made in the case of examinations for discovery. Section 176 of the Judicature Act apparently contemplates the taking of examinations for discovery before county court clerks; and in practice, such examinations are usually so taken in county court cases. See section 14, *infra*, and notes thereto.

12. The clerk shall not, for fee or reward, draw or advise upon a chattel mortgage or other paper or document connected with the duties of his office and for which a fee is not expressly allowed by the tariff. R.S.O. 1897, c. 55, s 11.

This section was passed for the purpose of placing county court clerks in the same position as registrars of deeds are under the Registry Act with regard to documents filed in their offices.

See section 9 of the County Judges Act, *supra*, as to prohibition against judges practising.

Section 30 of the Solicitors Act provides as follows:—

30. No solicitor shall practice in any court in Ontario, either in his own name or by his partner, deputy or agent, or in the name of any other person, or otherwise, directly or indirectly, while he holds, possesses, practices, carries on or conducts any of the offices of registrar of the court of appeal, registrar of the high court, clerk of the Crown and pleas, local registrar, deputy clerk of the Crown and pleas, clerk of a county court, or clerk of a division court, and every such person so practising, shall be subject to the for-

feiture of such office, and shall, in addition thereto, be subject to a penalty of $2,000, to be recovered in an action in the high court, to the use of Her Majesty; but nothing herein contained shall extend to any local master or deputy registrar of the high court, who is not a deputy clerk of Crown and pleas. R.S.O. 1897, c. 147, s. 27.

13. In the event of the death, resignation or removal from office of the clerk, the clerk of the peace shall, *ex-officio*, be the clerk until another person is appointed and assumes the duties of the office, and every clerk of the peace, while clerk of the court, shall, except in the County of York, be also *ex-officio* deputy clerk of the Crown and registrar of the surrogate court, if the clerk held that office; and in case the clerk was local registrar, the clerk of the peace, while he holds the office of clerk of the court, shall be *ex-officio* local registrar. R.S.O. 1897, c. 55, s. 12.

The following portion of the former section 12, from which the above is taken, has been omitted in the revision:—

Provided, however, that this enactment as to the clerk of the peace being *ex-officio* registrar of the surrogate court, shall not apply to any case where at the time of the death, resignation or removal of the clerk of the county court, he did not hold the office of registrar of the surrogate court. R.S.O. 1887, c. 47, s. 10(1); 60 V. c. 15, Sched. A(12).

(2) The clerk of the peace shall add the words *pro tem* when affixing his official designation as clerk of the county court, deputy clerk of the Crown, local registrar or registrar of the surrogate court to his signature in any writs, rules, grants or orders, signed by him under the provisions of this section. R.S.O. 1897, c. 47, s. 10(2).

The following section of the Statute Law Amendment Act, 1910, authorizes county court clerks to appoint deputies:

5. (1) All local registrars, deputy clerks of the Crown, county court clerks and surrogate registrars may by writing under their respective hands and seals of office appoint a deputy or deputies, who may perform all duties in the same manner and to the like effect as if done by the officer making the appointment. Any such officer may remove his deputy and appoint another in his place whenever he thinks it necessary.

(2) No such appointment shall be made without the approval in writing of the judge of the county or district court.

SPECIAL EXAMINERS.

14. The special examiners of the high court shall be officers of the county and district courts, and shall possess the like powers in county and district court cases as those possessed by them in high court cases. R.S.O. 1897, c. 55, s. 13.

The following are the sections of the Judicature Act providing for the appointment of special examiners:—

172. (1) The supreme court may, from time to time, under the seal of the court, appoint, and at discretion remove, special examiners for the purpose of taking evidence of parties and witnesses, and the examiners so appointed shall have all the powers formerly possessed by masters extraordinary and examiners. 58 V. c. 12, s. 175.

176. Where it appears to the Lieutenant-Governor in Council that the local registrar or deputy clerk of the Crown or clerk of the county court elsewhere than in Toronto, is infirm or ill, or is absent on leave, or is otherwise unable or unfit to act personally as special examiner, the Lieutenant-Governor in Council may appoint the shorthand writer for

the county court, or some other efficient person temporarily or otherwise to act as such special examiner, instead of the said local registrar, deputy clerk of the Crown, or clerk of the county court. 60 V. c. 14, s. 59.

Rule 443 provides that examinations for discovery may also take place without an order, before a local registrar, local master or deputy clerk.

Rule 900 (2) specially provides for examination of judgment debtors before the county court clerk in county court cases, and this practice is also generally followed in examinations for discovery. See notes to section 11, *supra*.

SITTINGS.

15.—(1) Except in the Counties of Carleton, Middlesex, Wentworth and York, and subject to the provisions of the County Judges Act, sittings of the county courts for the trial of issues of fact and assessments of damages, with or without a jury, shall be held semi-annually, to commence on the second Tuesday in June and December. R.S.O. 1897, c. 55, s. 15.

(2) In the Counties of Carleton, Middlesex and Wentworth two such sittings be held in each year, to commence on the first Tuesday in June and December.

(3) In the County of York four such sittings shall be held in each year, to commence on the first Tuesday in December and March, and on the second Tuesday in May and September. R.S.O. 1897, c. 55, s. 16.

(4) Except in the County of York, there shall be sittings of every county and district court on

the first Tuesday in April and October in each year for the trial of issues of fact and assessments of damages without a jury. R.S.O. 1897, c. 55, s. 17.

Sub-section (2) was passed in consequence of representations made by the county court judges that the sittings held at Ottawa, London and Hamilton, on the second Tuesdays, frequently clashed with the non-jury sittings of the high court at these places.

Under what were known as the "grouping clauses" of the former Local Courts Act, now repealed by section 19(2) of the County Judges Act, *supra*, the county courts with jury and Sessions in some counties were held on the first Mondays in June and December, while in others they were held on the first Tuesdays of these months. Even since the decision in Gibson v. McDonald, 7 O.R. 401, holding these clauses to be *ultra vires* of the legislature, these sittings have continued to be held on the same dates, but it is presumed that they will now conform to the above section.

The provisions of section 14 of the former Act, as to the quarterly sittings of the county court in term, have been omitted from the present Act, in consequence of the repealing of the former section 51, which required appeals in certain cases to be made to the county court in term. See notes to section 39, *infra*.

16. Sittings of the district courts for the trial of issues of fact and assessments of damages, with or without a jury, shall be held at,

(*a*) Bracebridge on the second Tuesday of June and November;

(*b*) Fort Frances on the first Tuesday of April and November;

(*c*) Gore Bay on the last Tuesday of May and the third Tuesday of October;

(*d*) Kenora on the first Tuesday of June and the second Tuesday of November;

(*e*) North Bay on the second Tuesday of June and the fourth Tuesday of November;

(*f*) Parry Sound on the first Tuesday of June and December;

(*g*) Port Arthur on the first Tuesday of May and the second Tuesday of November;

(*h*) Sault Ste. Marie on the second Tuesday of June and November; and at

(*i*) Sudbury on the first Tuesday of June and November. R.S.O. 1897, c. 109, s. 21; 62 V. (2), c. 14, s. 7; 7 Edw. VII. c. 25, s. 4; 8 Edw. VII. c. 36, s. 4.

By section 6 of the General Sessions Act, *infra*, the sittings of the courts of general sessions at the above district towns were fixed for certain dates. These same dates, except for North Bay, were inserted in the above section 16 when the bill received its first reading. On the third reading, however, the dates for Bracebridge, Fort Frances, Kenora, North Bay and Port Arthur were altered to the above.

By sub-section (3), of section 32 of the Statute Law Amendment Act, 1910, the above mentioned section of the General Sessions Act was amended to correspond with the above dates as to Fort Frances and Kenora, but not as to Bracebridge, North Bay or Port Arthur. The sub-section does assume to change "October" to "November" in the case of Port Arthur, but as the latter month was already the one specified, the amendment was futile. The result will be that, for the autumn sittings, at least, the district courts will

be held at different times from the sessions in some districts. See notes to section 6 of the Sessions Act, *infra*.

17. The sittings of the county courts provided for by sub-sections 1 and 2 of section 15 and the sittings of the district courts, provided for by section 16 shall not open earlier than one o'clock in the afternoon of the first day of the sittings. R.S.O. 1897, c. 55, s. 18.

18. Besides the regular sittings, additional sittings for trials without a jury may be held at such time as the judge may direct or appoint; and such sittings shall be held as often as may be requisite for the due despatch of business. R.S.O. 1897, c. 55, s. 19.

The following rule contains substantially the same provisions as section 18:—

1214. Subject to rules of court, 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 which by any statute or otherwise was formerly required to be discharged out of or during term. Con. Rule 1255.

19. The judges of any county or district court may sit separately and concurrently for the despatch of the business of a sittings. *See* R.S.O. 1887, c. 55, s. 20.

20.—(1) Where the judge who is to hold the sittings is unable to hold the same at the time ap-

pointed, the sheriff, or in his absence the deputy sheriff, shall adjourn the court by proclamation to an hour on the following day to be named by him, and so from day to day until the judge is able to hold the court, or until he receives other directions from the judge or from the provincial secretary.

(2) The sheriff shall forthwith notify the provincial secretary of the adjournment. R.S.O. 1897, c. 55, s. 21.

JURISDICTION.

The county court being an inferior court of record, it can have no jurisdiction that has not been expressly conferred upon it. Powley v. Whitehead, 16 U.C.R. 589; Portman v. Patterson, 21 U.C.R. 231; Wetherall v. Garlow, 21 U.C.R. 1; Fair v. McCrow, 21 U.C.R. 599. If there is no jurisdiction, all the proceedings are *coram non judice*. *Re* Cosmopolitan Life Association, 15 P.R. 185. It has been held to be incumbent on the plaintiff to shew affirmatively by his pleading that the action is one within the jurisdiction of the county court. Mayor of London v. Cox, L.R. 2 H.L. 239; Morice v. Forster, 25 N.B.R. 1; but see Jordan v. Marr, 4 U.C.R. 53; Davidson v. B. & N. H. Ry. Co., 5 A.R. 315; Cheesewright v. Thorn, 38 L.J. Ch. 1869; Dunlap v. Babang, 27 N.B.R. 549.

Heretofore prohibition was the principal remedy resorted to against the assumption by the court, of jurisdiction which it did not possess, but now section 26, *infra*, provides that "prohibition shall not lie in respect of an action or counterclaim which may be transferred under the provisions of this Act into the high court, or into another county or district court."

It was held in Godson v. City of Toronto, 16 A.R. 452, 18 S.C.R. 36, that a county court judge was not acting

judicially in holding an inquiry under the Municipal Act; that he was in no sense a court and had no power to pronounce judgment imposing any legal duty or obligation on any person, and he was not, therefore, subject to control by a writ of prohibition from a superior court.

In *re* Alexander Boyes, 13 O.R. 3, it was doubted whether the court had power to interfere by prohibition, with the county judge as an election officer, except where express statutory power to do so was given.

In McLeod v. Noble, 28 O.R. 528, 24 A.R. 459, it was held that a judge of the high court had no jurisdiction to restrain by injunction, a county court judge from holding a recount of the ballots cast at an election for the House of Commons. See also Crossman v. Williams, 4 O.W.R. 14.

For form of order for prohibition, see form No. 18.

A judge of a county court may be compelled by an order in the nature of a mandamus (see Rule 1080), to exercise the jurisdiction conferred on him under this Act. The following principles, deducible from the authorities, are laid down in the English Annual County Courts Practice, 1910, pp. 100, *et seq.*

1. The writ is a high prerogative writ, and is not granted of right, *ex debito justitiae*.

2. Two circumstances must concur to justify the grant of the order, viz., a special legal right to the performance of the act required to be done, and the absence of an effectual remedy.

3. Though the writ will lie where that has not been done which a statute orders to be done, it will not be granted for the purpose of undoing what has been done; so it will not lie where an inferior court has decided in a particular case unjustly or improperly.

4. A mandamus is never granted unless there has been a distinct demand for the performance of that which it is the object of the mandamus to enforce, and a direct refusal,

either in terms or by circumstances which shew an intention to withhold from doing the act required.

5. The remedy by mandamus cannot be extended to cases to which it does not by law extend, though the parties waive the objection.

In Forde v. Crabb, 8 U.C.R. 274, a mandamus was refused to compel a judge to approve of the security tendered after the time which he had given for such tender had expired.

In *re* Burns v. Butterfield, 12 U.C.R. 1, it was held that mandamus would lie to a judge of a county court commanding him to hear and determine a matter, but not to correct his judgment when given.

In *re* Woods v. Rennet, 12 U.C.R. 167, it was held that a mandamus would not lie to the judge of a county court to reverse his decision on a point of practice.

In *re* Judge of the County Court of Elgin, 10 U.C.R. 588, a mandamus was refused to compel the judge to act further in a garnishee application, which was opposed by one H. as assignee of the judgment debtor, from whose answer it appeared that the judge was interested in the claim with H., who was his brother-in-law.

In Williamson v. Bryan, 12 U.C.C.P. 275, a mandamus was refused to compel a county judge to decide a case after he had endorsed upon a rule nisi before him, a memorandum that a rule absolute was refused, upon which decision a judgment had been entered.

In *re* Judge of County Court of Elgin & Macartney, 13 U.C.C.P. 73, a mandamus was refused to compel the judge to grant a summons for rescinding an order made by him staying proceedings in a cause until a trustee should give proper indemnity against the costs of an action.

In Hebling v. Duggan, 1 C.L.T. 108, where, upon the mere statement of counsel for defendant that the title to

land was in dispute, the judge refused to proceed, it was held, following the decision in Page v. Sloan (not reported), that a writ of mandamus should go to the judge to proceed with the case.

In Coolican v. Hunter, 7 P.R. 237, it was held that a mandamus does not lie to command a judge of a county court to alter his adjudication upon matters within his jurisdiction.

In *re* Dean v. Chamberlain, 8 P.R. 303, it was held that where a county court judge improperly refuses to hear the argument of a rule nisi, mandamus is the proper remedy.

In *re* White v. Galbraith, 12 P.R. 513, it was held that a judge could not be compelled by mandamus to exercise his discretion to permit an amendment.

See also *re* Ratcliffe v. Crescent Mill and Timber Co., 1 O.L.R. 331, and cases therein referred to; *re* Strathroy Local Option By-law, 1 O.W.N. 465; also notes to section 42, *infra*.

For forms of order of mandamus, see form No. 19.

21.—(1) In an action in the high court, the county or district court of the county or district, the country or district town of which is named as the place of trial, shall have jurisdiction for the purpose of trial only, where all the parties agree thereto by a memorandum in writing signed by them or their solicitors and filed in the proper office at or before the time of setting the action down for trial, but all proceedings in the action subsequent to the trial shall be had, and all costs, fees and disbursements, including those of the trial, shall be the same as if the trial had taken place at a sittings of the high court.

(2) Where an action has been entered for trial in the high court the parties may by filing the memorandum before the action has been tried transfer the same for trial only by such county or district court. 6 Edw. VII. c. 20, s. 1.

For form of consent, see form No. 1.

The Judicature Act contains the following additional provisions, as to the trial of high court actions in the county court, and of county court cases in the high court:—

92. (1) All issues of fact and assessments of damages in the high court relating to debt, covenant and contract, where the amount is liquidated, or ascertained by the signature of the defendant, may be tried and assessed in the county court of the county where the trial is to take place, if the plaintiff desires it, unless a judge of the high court otherwise orders, and upon such terms as the judge deems meet.

(2) In such case the action shall be entered for trial, notice of trial shall be given, and the trial take place in the same way as in ordinary cases in such county court.

(3) In any action in the high court, in which the amount of the demand is ascertained by the signature of the defendant, and in any action for any debt in which a judge of the said high court is satisfied that the case may be properly tried in a county court, any judge of the high court may order that such case shall be tried in the county court of the county [the county town of which is named as the place of trial], and such action shall be tried there accordingly, and the record shall be made up as in other cases, and the order directing the case to be tried in the county court shall be left with the clerk of the county court on entering the action for trial, annexed to the record; and the trial shall take place in the same way as in ordinary cases in such county court. 58 V. c. 12, s. 90.

See Cushman v. Reid, 5 P.R. 121, and McPherson v. McPherson, 5 P.R. 240; Riach v. Hall, 11 U.C.R. 356.

For form of order, see form No. 2.

93. (1) By the order of a judge of the high court, made upon such terms as the judge may consider just, the issues of fact and assessment of damages in any action pending in a county court may be tried and assessed at the sittings of the high court at any county town.

(2) In such cases the action shall be entered and the case tried as in ordinary cases. 58 V. c. 12, s. 91.

See Pattypiece v. Mayville, 21 U.C.C.P. 316; Wetherall v. Garlow, 3 U.C.R. 1.

For form of order, see form No. 3.

94. Where any such case is referred by the presiding judge at such sittings, the county court in which the action is brought, and the judge thereof, shall have the same power to enforce any award, report or certificate made on the reference, and to make rules and order upon appeals therefrom and motions relating thereto, as if the order referring the case had been made by the county judge. 58 V. c. 12, c. 92.

95. The clerks of the several county courts shall provide books in which the judges presiding at the sittings of the high court, where cases brought in any county court are tried or assessed under this Act, may enter their notes of such trials and assessments, and such books immediately after the trials or assessments, shall be returned to the said clerks and shall remain in their offices. 58 V. c. 12, s. 93.

96. The jury fees and the fees and charges payable and pertaining to officers of the county courts, upon all actions or proceedings brought in the county courts and tried or assessed in the high court, shall be chargeable and paid as if the same were being tried or assessed in the county courts;

and no other fees shall be chargeable thereon, and the clerk of a county court shall be entitled to receive and take such part thereof as pertains to him, to his own use. 58 V. c. 12, s. 94.

The following rules are those applicable to such trials:—

561. In any of the cases in sections 90 and 91 of the Judicature Act, 1895. (*a*) the notice of trial or assessment of damages shall state that the cause will be tried, or the damages assessed at the sittings of the high court or county court, according to the fact. Con. Rule 690.

562. A motion to be made, in respect to the trial, judgment, verdict, or assessment of damages in a high court case tried or assessed at the sittings of any county court, shall be made in the high court or the court of appeal, according to the alternative right given in other cases. Con. Rule 693.

563. A motion in respect to the trial, judgment, verdict or assessment of damages in any county court case tried at a sittings of the high court, shall, unless otherwise ordered, be made at the sittings of the divisional court at which a motion would be required to be made if the action were in a high court, and according to the practice of the high court; and any order made in that court shall be final and shall not be subject to appeal. Con. Rule 694. Rules of 1st Jan., 1896, 1473.

In Waterloo Mfg. Co. v. Hoare, an appeal to the court of appeal was quashed under this section, September 18th, 1893.

564. In any action in a county court entered for trial at any sittings of the high court, the judge presiding at the sittings shall have the same powers as to amendment of the pleadings and proceedings, putting off the trial, reference, making the cause a remanet and otherwise dealing with the cause and proceedings therein, as if the action had been commenced in the high court. Con. Rule 695.

See King v. Glassford, 11 U.C.C.P. 490.

56. Wherever the judge indorses on the record in any such action the word "remanet," and adds any words to the effect following: "And the within cause may be entered and tried at any county court, or sittings of the high court," such cause may without payment of any further fee for entering the case be entered at any subsequent sittings of the county court, or sittings of the high court, for which notice of trial may be given, and the case may be tried and disposed of in the same way as any other case entered at such sittings. Con. Rule 696.

566. On the application of any party, the county court clerk shall, at the cost of the party, forward to the central office, a certified copy of the evidence, and the record and exhibits. Con. Rule 697. Rules 1st Jan., 1896, 1474.

1141. The costs on all proceedings where a high court case is tried in a county court or a county court case in the high court, shall be the usual costs of such cases in the court in which the action was brought. Con Rule 1182.

In Gildersleeve v. Hamilton, 11 U.C.C.P. 298, it was held that in a case pending in one of the superior courts and taken down for trial to the county court, the judge of the latter court could order immediate execution.

It was held in Clark v. Clifford, 7 P.R. 329, that where a county court case had been directed to be tried at the assizes, an application to set aside the notice of trial must be made to the county court.

In Barker v. Leeker, 9 P.R. 107, where a verdict was entered for the plaintiff on the trial of an issue directed by the court of chancery to be tried at the sittings of a county court, and the county court judge set aside the verdict and entered a nonsuit on ground embracing matters of law as well as of fact and evidence, it was held that he had no

power to do so, and that the application should have been made to the court that directed the issue.

Prior to the Law Reform Act, 1909, the County Courts Act contained the following sections 22, 23 and 27, which were then repealed, but no section similar to the old section 22 has been re-enacted, while the present section 22, *infra*, replaces the former sections 23 and 27:—

22. Except in the cases of actions in which, by section 27 of this Act, or by any other Act jurisdiction is conferred upon county courts or a judge thereof, the said courts shall not have cognizance of any action:—

1. In which the title to land of a greater value than $200 is brought in question; or

2. In which the validity of any devise, bequest or limitation exceeding $200 under any will or settlement is disputed, nor where the assets of the estate or fund out of which the amount in question is payable exceeds $1,000; or

3. For libel and slander; or

4. For criminal conversation or seduction; or

5. Against a justice of the peace for anything done by him in the execution of his office, if he objects thereto. 59 V. c. 19, s. 1.

23. Subject to the exceptions contained in the last preceding section, the county courts shall have jurisdiction;

1. In all personal actions where the debt or damages claimed do not exceed the sum of $200;

2. In all causes and actions relating to debt, covenant and contract, to $600, where the amount is liquidated or ascertained [as being due] by the act of the parties or by the signature of the defendant;

3. To any amount on bail-bonds given to a sheriff in any case in a county court, whatever may be the penalty;

4. On recognizances of bail, taken in a county court, whatever may be the amount recovered or for which the bail therein may be liable;

5. In actions of replevin where the value of the goods or other property or effects distrained, taken or detained, does not exceed the sum of $200, as provided in the Replevin Act;

6. In interpleader matters, as provided by the rules respecting interpleader. R.S.O. 1887, c. 47, s. 19; 59 V. c. 19, s. 2.

7. In any cause or action relating to debt, covenant and contract where the amount is liquidated or ascertained by the act of the parties or by the signature of the defendant, when the plaintiff and defendant, before the issue of the writ, agree by memorandum in writing signed by them and filed upon the application for the writ, that the court shall have power to try the action;

8. In actions for the recovery of or for trespass or injury to land where the value of the land does not exceed $200;

9. In actions by persons entitled to and seeking an account of the dealings and transactions of a partnership, the joint stock or capital not having been over $1,000, whether such account is sought by claim or counterclaim;

10. In actions by a legatee under the will of any deceased person, such legatee seeking payment or delivery of his legacy not exceeding $200 in amount or value out of such deceased person's estate not exceeding $1,000;

11. In actions by a legal or equitable mortgagee whose mortgage has been created by some instrument in writing, or a judgment creditor, or a person entitled to a lien or security for a debt, seeking foreclosure or sale, or otherwise, to enforce his security, where the sum claimed as due does not exceed $200;

12. In actions by a person entitled to redeem any legal or equitable mortgage or any charge or lien, and seeking

to redeem the same, where the sum actually remaining due does not exceed $200;

13. In actions by any person seeking equitable relief in respect of any matter whatsoever, where the subject-matter involved does not exceed $200;

14. In any action or contestation to establish the right of a creditor to rank upon an insolvent estate where the amount of such claim does not exceed $400. 59 V. c. 19, s. 3.

27. (1) The several county courts shall have jurisdiction in actions for the recovery of corporeal hereditaments (where the yearly value of the premises, or the rent payable in respect thereof, does not exceed $200), in the following cases, namely:—

(*a*) Where the term and interest of the tenant of such corporeal hereditament has expired, or has been determined by the landlord or the tenant, by a legal notice;

(*b*) Where the rent of such corporeal hereditament is sixty days in arrear, and the landlord has the right by law to re-enter for non-payment thereof;

and in respect to such actions the said courts shall have and exercise the same powers as belong to and may be exercised by the high court, in and respect to actions for the recovery of land.

(2) The term "landlord," as used in this section shall be understood to mean the person entitled to the immediate reversion of the land; or if the property be holden in joint tenancy, coparcenary or tenancy in common, shall be understood to mean any one of the persons entitled to such reversion. R.S.O. 1887, c. 47, s. 20(1)(3).

The following are the provisions of the Division Courts Act, 1910, as to the jurisdiction of that court:—

61. The court shall not have jurisdiction in any of the following cases:—

(*a*) An action for the recovery of land or an action in which the right or title to any corporeal or incorporeal hereditaments, or any toll, custom or franchise comes in question;

(*b*) An action in which the validity of any devise, bequest or limitation under any will or settlement is disputed;

(*c*) An action for malicious prosecution, libel, slander, criminal conversation, seduction or breach of promise of marriage;

(*d*) An action against a justice of the peace for anything done by him in the execution of his office, if he objects thereto. R.S.O. 1897, c. 60, s. 71;

(*e*) An action upon a judgment of order of the high court or a county court where execution may issue upon or in respect thereof. 61 V. c. 15, s. 9.

62. (1) Save as otherwise provided by this Act, the court shall have jurisdiction in:—

(*a*) A personal action where the amount claimed does not exceed $60;

(*b*) A personal action if all the parties consent thereto in writing, and the amount claimed does not exceed $100;

(*c*) An action on a claim or demand of debt, account or breach of contract, or covenant, or money demand, whether payable in money or otherwise, where the amount or balance claimed does not exceed $100; provided that in the case of an unsettled account the whole account does not exceed $600;

(*d*) An action for the recovery of a debt or money demand where the amount claimed, exclusive of interest whether the interest is payable by contract or as damages, does not exceed $200, and the amount claimed is

(i) Ascertained by the signature of the defendant or of the person whom as executor or administrator he represents, or

(ii) The balance of an amount not exceeding $200, which amount is so ascertained, or

(iii) The balance of an amount so ascertained which did not exceed $400 and the plaintiff abandons the excess over $200.

An amount shall not be deemed to be so ascertained where it is necessary for the plaintiff to give other and extrinsic evidence beyond the production of a document and proof of the signature to it.

The jurisdiction conferred by this clause shall apply to claims and proceedings against an absconding debtor.

(*e*) An action or contestation for the determination of the right of a creditor to rank upon an insolvent estate where the claim of the creditor does not exceed $60.

(2) Claims combining—

(*a*) Causes of action in respect of which the jurisdiction is by the foregoing sub-section of this section limited to $60, hereinafter referred to as class (*a*);

(*b*) Causes of action in respect of which the jurisdiction is by the said sub-section limited to $100, hereinafter referred to as class (*b*);

(*c*) Causes of action in respect of which the jurisdiction is by the said sub-section limited to $200, hereinafter referred to as class (*c*),

may be joined in one action; provided that the whole amount claimed in respect of class (*a*) does not exceed $60; and that the whole amount claimed in respect of classes (*a*) and (*b*) combined, or in respect of class (*b*), where no claim is made in respect of class (*a*), does not exceed $100, and that the whole amount claimed in respect of classes (*a*) and (*c*) or (*b*) and (*c*) combined, does not exceed $200, and that in respect of classes (*b*) and (*c*) combined, the whole

amount claimed in respect of class (*b*) does not exceed $100.

(3) The findings of the court upon claims so joined shall be separate.

(4) The court shall also have jurisdiction in actions of replevin, where the value of the goods or other property or effects distrained, taken or detained, does not exceed $60, as provided in the Replevin Act. R.S.O. 1897, c. 60, s. 72.

(5) The court shall also have jurisdiction in actions between teachers and school boards as provided by the High Schools Act, the Public Schools Act, and the Separate Schools Act.

65. (1) The court in actions otherwise within its jurisdiction shall have power to grant relief, redress, or remedy or combination of remedies, either absolute or conditional, including the power to relieve against penalties and forfeitures, in as full and ample a manner as might be done in the like case by the high court. R.S.O. 1897, c. 60, s. 75.

(2) Nothing in this section shall confer jurisdiction to grant an injunction or to appoint a receiver. 61 V. c. 15, s. 1.

67. (1) A cause of action shall not be divided into two or more actions for the purpose of bringing the same within the jurisdiction of the court.

(2) Where a sum for principal and also a sum for interest is due and payable to the same person upon a mortgage, bill, note, bond or other instrument, he may, notwithstanding anything in this section contained, but subject to the other provisions of this Act, sue separately for every sum so due. R.S.O. 1897, c. 60, s. 79.

The limitation in clause (*c*) of section 62(1), as to unsettled accounts, does not apply to actions under clause (*d*) of the same sub-section. The curious anomaly existed

under the former Act, that, while in an action on an unliquidated claim, no matter how small the balance sued for might be, the division court had no jurisdiction, if the trial necessitated an investigation of accounts exceeding $400 (now $600), whereas if the claim was liquidated, then, no matter how large the original amount might have been, an action might be maintained on it in the division court, so long as the balance sued for did not amount to over $200. See Bank of Ottawa v. McLaughlin, 8 A.R. 543. It is by no means clear that clause (*d*) and its sub-divisions continue this state of the law. Probably it was the intention of the revisers to do so by sub-division (ii), but the entire change in construction and phraseology renders it doubtful whether that object was accomplished.

As will be seen by Con. Rule 1132, in notes to section 11, *supra*, it is at his peril as to costs that a plaintiff brings an action in any court other than the lowest one having jurisdiction. See Ross v. Townsend, 1 O.W.N. 457.

There are no provisions in the County Courts Act, similar to the above section 67; but where the plaintiff's claim arises out of one entire transaction, the amount of which is beyond the jurisdiction of the county court, he can proceed in the latter court only by abandoning the excess, either in the writ, or afterwards under section 27, *infra*. In either case he forfeits such excess, and cannot recover it in another action.

22.—(1) The county and district courts shall have jurisdiction in:

(*a*) Actions arising out of contract, expressed or implied, where the sum claimed does not exceed $800;

This clause of sub-section 1, which formed part of section 21 of the Law Reform Act, 1909, has not only greatly

increased the jurisdiction of these courts, but has also effected a very desirable simplification of the law, by doing away with the old distinction between "liquidated" and "unliquidated" claims arising out of contract. See an article by the writer in volume 22, Canadian Law Times (1902), p. 419, for a discussion of the numerous conflicting decisions, not only of single judges and divisional courts, but of the court of appeal, as to what constituted "liquidation." An attempt was made, by 4 Edw. VII. c. 10, s. 10, to remedy this state of affairs by inserting the words "as being due," after the word "ascertained," as shewn above, but it was not very successful, so this simple and clear-cut provision was adopted. In consequence, the great wealth of legal decisions under the former statute, with all their distinctions and conflicts, have become obsolete.

The scope of the clause has also been considerably widened by the inclusion in it of actions arising out of "implied" contracts, but it is sometimes difficult to determine whether a particular case falls within that class, or whether it is really an action of tort. It has been held in England that an action is "founded on contract" when it does not arise out of a breach of a general duty, and when there would be no liability but for a contract. Legge v. Tucker, 26 L.J. Ex. 71. Similarly, when it is directly and not remotely founded on such contract. Pontifex v. Midland Ry., 47 L.J.Q.B. 28. An action against a carrier for negligent loss of goods is "founded on contract." Fleming v. Manchester S. & L. Ry., 4 Q.B.D. 81, disapproving Tattan v. G. W. Ry., 29 L.J.Q.B. 184. See, however, Turner v. Stallibrass, 67 L.J.Q.B. 52, and Sachs v. Henderson, 71 L.J.K.B. 392. But an action against a carrier for delivery of goods to an insolvent consignee after notice of a stoppage in transitu, is founded on tort and not on contract, because the stoppage puts an end to the original contract for carrying. Pontifex v. Midland Ry., *supra*. So also an action for

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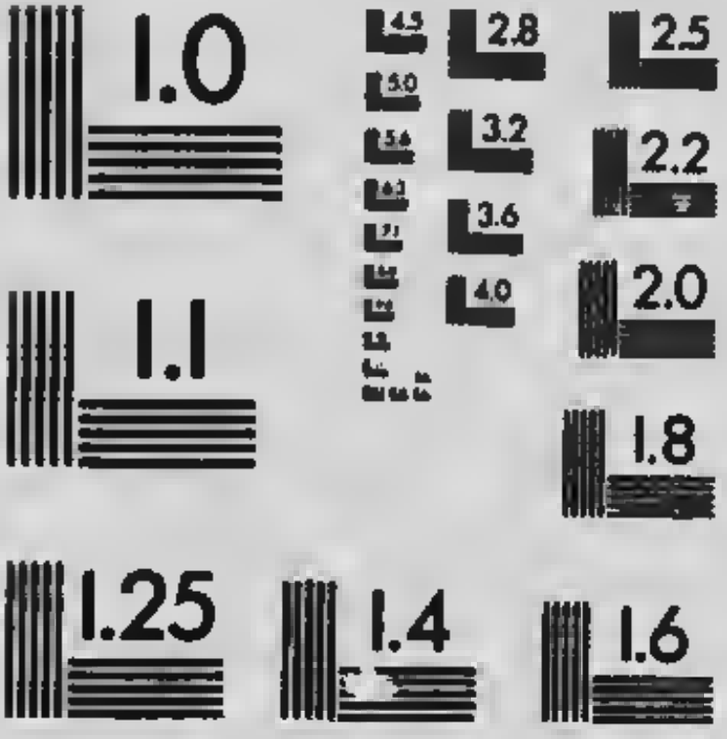

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personal injuries to a passenger occasioned by negligence. Taylor v. Manchester S. & L. Ry., 64 L.J.Q.B. 6. But negligent loss by a cabman of his fare's luggage gives rise to an action "founded on contract." Baylis v. Lintott, 42 L.J.C.P. 119. So also an action for negligent treatment by a livery-stable keeper of his customer's horse. Legge v. Tucker, *supra*.

Where an auctioneer wrongfully resold goods purchased by the plaintiff at an auction, it was held that an action against the auctioneer was founded on tort. Cohen v. Foster, 61 L.J.Q.B. 643. So also an action for the recovery of a picture wrongfully detained. Bryant v. Herbert, 47 L.J.C.P. 670. In De la Bere v. Pearson, 77 L.J.K.B. 380, the plaintiff wrote the defendant requesting him to advise as to the investment of a sum of money, and to name a good stock-broker. The defendant handed the plaintiff's letter to a broker, who wrote to the plaintiff offering to invest the amount for him, and the plaintiff sent the broker a cheque requesting him to purchase certain stocks. The broker misappropriated the cheque, and the plaintiff sued the defendant for damages. It was held that there was a contract, and that the defendant had committed a breach of it, which breach was the cause of the damage, notwithstanding the intervening wrongful act of the broker. But in a more recent case, in which the plaintiff alleged that he employed the defendant, a dentist, for reward to extract a tooth by his painless process, and that the tooth was so unskillfully extracted, that portions of it were left in the plaintiff's jaw, it was held to be an action of tort. Edwards v. Mallon, 77 L.J.K.B. 608.

In Johnson v. Kenyon, 13 P.R. 24, the plaintiff held the defendant's note for $300, and gave it back to the defendant to hold until the latter should be free from a certain liability as surety. After he became freed he refused to give up the note, and destroyed it, and this action was brought for such

refusal. It was held to be an action arising out of contract. This decision was subsequently distinguished in Plummer v. Coldwell, 15 P.R. 144. The latter action was brought to restrain the defendants by injunction from negotiating a promissory note for $230, and to compel them to deliver it up to the plaintiffs. It was determined that the note was wrongfully held by the defendants, who had obtained it under the pretense of discounting it, and it was held that the action sounded in tort and not in contract. See also Bank of Upper Canada v. Widmer, 2 O.S. 256, and notes to following sub-section.

Apart from the provisions of section 26, *infra*, the plaintiff has the right, before action, to abandon any portion of his claim in excess of the jurisdiction of the county court, so as to bring his action in that court. *Re* MacKenzie and Ryan, 6 P.R. 323. He is also entitled to reduce a claim originally beyond the jurisdiction of the court to an amount within the jurisdiction by crediting a payment received thereon. Brown v. McAdam, 4 P.R. 54. The same rule applies where the defendant has a set-off which, before action, was agreed on by the parties as a payment on account. Fleming v. Livingstone, 6 P.R. 63; Bennett v. White, 13 P.R. 149. Where the plaintiff affirmed and the defendant denied that there had been an agreement to treat the set-off as a payment on account, and the trial judge found as a fact that there was such an agreement, it was held that the court had jurisdiction. *Re* Jenkins v. Miller, 10 P.R. 95. In the absence of such agreement, the plaintiff cannot, by giving the defendant credit for his set-off and thereby reducing his claim to an amount within the jurisdiction of the court, give the court jurisdiction. Sherwood v. Cline, 17 O.R. 30; Furnival v. Saunders, 26 U.C.R. 119; Osterhout v. Fox, 14 O.L.R. 599; Finn v. Gosnel, 14 O.W.R. 830. As to the difference between a set-off and a counterclaim, and the effect on the question of costs, see Cutler v. Morse, 12 P.R.

594; Sanderson v. Ashfield, 13 P.R. 230; Girardot v. Welton, 19 P.R. 162 and 201.

The following Rules govern the joining of several different causes of action in the high court:—

232. Subject to the following rules, the plaintiff may unite, in the same action, several causes of action. Con. Rule 340.

233. A claim by an assignee in insolvency (or for the benefit of creditors), shall not, unless by leave of the court or a judge, be joined with any claim by him in any other capacity. Con. Rule 342.

234. A claim by or against husband and wife may be joined with claims by or against either of them separately. Con. Rule 343.

235. 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. Con. Rule 344.

236. A claim by plaintiffs jointly may be joined with a claim by them or any of them separately against the same defendant. Con. Rule 345.

237. If several causes of action joined in the same action are such as cannot be conveniently disposed of in one action, the court or a judge may order any of them to be excluded, or may direct the issues respecting the separate causes of action to be tried separately, and may direct the statement of claim, or, if no statement of claim has been delivered, the copy of the writ and the indorsement of claim thereon to be amended accordingly. Con. Rule 346.

Section 72 of the Division Courts Act, *supra*, provides that claims founded on contract and on tort may be combined and tried in one action in that court, under certain circumstances. There is not, and never has been any similar

legislation with regard to county courts, but the above rules are apparently applicable under rule 1216, *infra*.

The cases of Jordan v. Marr, 4 U.C.R. 53; Vogt v. Boyle, 8 P.R. 249; McLaughlin v. Shaefer, 13 A.R. 253, and Thomson v. Eede, 22 A.R. 105, are no longer applicable, since the abolition of the difference between liquidated and unliquidated claims. In any event, these cases applied only to actions on contracts, and did not deal with the joining therewith of claims for torts, or any of the other classes of actions in which the county courts had, or now have jurisdiction.

It follows that a claim under any of the sub-sections of this section in which the jurisdiction is limited to $500, may be joined with a claim under the above sub-section, at least where the amount of the combined claims does not exceed $500, and where such joinder would be permitted in the high court under the above rules.

(*b*) Personal actions, except actions for criminal conversation and actions for libel, where the sum claimed does not exceed $500;

The meaning of the words " personal actions" is not very clear, especially in view of the present more comprehensive nature of the preceding clause of this sub-section. Apparently, personal actions include actions of contract as well as of tort, though it may be doubted whether these words are now intended to include anything but the latter. Under the previous corresponding section, the words "debt or damages" were used, but it will be noticed that in the above sub-section "sum" has been substituted. Under the former Act, unliquidated claims arising out of contract, were held to be included in the term "personal actions." Now, how-

ever, actions on such claims may be brought under clause (*a*), *supra*.

In Whiddon v. Jackson, 18 A.R. 439, Burton, J.A., defined a personal action as an action "for debt or other chattels or damages to them, or injury to his person." See also *Re* McGugan v McGugan, 21 O.R. 289, where "personal actions" were held to mean common law actions. In Stroud's Judicial Dictionary a personal action is defined as "such as one man brings against another on any contract, for money, goods, or on account of an offence or trespass, and which claims a debt, goods, chattels or damages." Wharton's Law Lexicon defines a personal action as "one brought for specific recovery of goods and chattels, or for damages or other redress for breach of contract or other injury of whatever description, the specific recovery of lands, tenements and hereditaments only excepted." It adds, however, that "the term is often used in a narrower sense to express an injury to a person as for slander, injury by accident, as distinguished from injury to property."

The exception in the above sub-section, as to criminal conversation and libel, was rendered necessary by the repeal of section 22 of the former Act, which contained a specific list of matters not within the jurisdiction of the county courts. Actions for slander and seduction, which were formerly expressly excepted from the jurisdiction of these courts, may now be brought therein, but actions for criminal conversation and libel are still excepted, no matter how small the amount of damages claimed.

The following are instances of claims held to be recoverable in county courts as personal actions:—

Money claimed by a curate for the purposes of a Sunday School and claimed by its manager: Christie v. Sanberg, W.N. (1880) 159; paving rates assessed under an Act of Parliament: Baddly v. Denton, 4 Ex. 508; freight due under a charter-party: Regina v. Southend, 13 Q.B.D. 142;

damages for collision between barges: Acovell v. Bevan, 19 Q.B.D. 428; an action against a bailiff who has distrained for poor rates to recover as much of his charge as was unreasonable: Regina v. Philbrick, 74 L.J.K.B. 464; an action of detinue: Taylor v. Addyman, 13 C.B. 309; an action to recover the value of a non-negotiable note: Clegg v. Barretta, 56 L.T. 775; an action by a partner against his co-partner for a purely money demand which is part of the partnership assets: Allen v. Fairfax Cheese Co., 21 O.R. 598, distinguishing *Re* McGugan v. McGugan, 21 O.R. 289, and Whidden v. Jackson, 18 A.R. 439; an action by a legatee against the devisee of lands charged with the payment of a legacy: Grey v. Richmond, 22 O.R. 256; an action by a mortgagor against a mortgagee to recover, as money received, the surplus derived from the sale under power of sale of the mortgaged lands: Reddick v. Traders Bank of Canada, 22 O.R. 449; an action for trespass to land: Seabrook v. Young, 14 A.R. 97; an action to recover a penalty under a statute: Chaput v. Robert, 14 A.R. 354; an action for malicious prosecution: Blair v. Asselstine, 15 P.R. 211.

(*c*) Actions for trespass or injury to land where the sum claimed does not exceed $500, unless the title to the land is in question, and in that case also where the value of the land does not exceed $500, and the sum claimed does not exceed that amount;

This clause takes the place of the latter part of sub-section 8 of section 23 of the former Act, while the following clause includes the first part of the old sub-section 8 as well as the former section 27. This clause, as it now stands, covers two distinct classes of cases, namely:—

(1) Actions up to $500, no matter what may be the value of the land with respect to which the injury was committed, so long as the title to the land itself is not in question, and

(2) Actions in which the title to land is in question, and in which neither the damages claimed nor the value of the land exceeds $500.

In the first class of cases such actions were previously considered within the jurisdiction of the county courts as "personal actions," even before these courts were given power to try any actions in which the title to land came in question. See Seabrook v. Young, 14 A.R. 97, and cases therein referred to. In that case, which was an action for trespass to land, Osler, J.A., in delivering the judgment of the court of appeal, said: "It was strenuously argued that an action of this nature could not be brought in the county court under any circumstances, a contention in which I do not agree. It depends upon whether the title is brought in question by the pleadings or upon the evidence, and it need not necessarily be brought in question or denied in such an action as this any more than in an action for use and occupation."

In the case, however, of Ross v. Vokes, 14 O.W.R. 1142, this view was apparently not adopted. The action was brought in the high court before the recent amendments to the County Courts Act came into force, to recover $200 damages to plaintiff's land by the obstruction of his access thereto, and for a mandatory order requiring the defendant to remove the obstructions. No statement of defence was delivered, nor apparently was any question raised as to the plaintiff's title. On motion for judgment, the plaintiff was granted the relief asked, with the costs of the action. The taxing officer taxed these costs on the county court scale, but on appeal to Meredith, C.J., this ruling was reversed on the ground that the value of the plaintiff's land exceeded $200. The learned judge, after quoting the sub-section referring to personal actions, denied its applicability to a case of this kind, and held that the generality of its provisions

was controlled by paragraph 8, which he interpreted as meaning that the county court was to have jurisdiction in actions for damages for trespass or injury to land only where the value of the land did not exceed $200. No reference appears to have been made to Seabrook v. Young, *supra*.

In the second class of cases it is important to ascertain the exact meaning of the words "the value of the land." In Brown v. Cocking, 37 L.J.Q.B. 250, it was held that where a judge had decided that the annual value of the land did not exceed 20 pounds, and there was evidence to support his decision, the court could not grant a prohibition; but in the subsequent case of Elston v. Rose, 38 L.J.Q.B. 6, it was held that, the county court judge having taken an erroneous test of value, the court could grant prohibition. It was also held in the latter case that the value intended was the marketable value, for which the rent paid by the tenant to the immediate landlord is, in the absence of exceptional circumstances, a fair criterion, and that the judge erred by deducting the ground rent in arriving at the annual value of the premises.

In Stolworthy v. Powell, 55 L.J.Q.B. 288, the plaintiff was the lessee of certain property at an annual rental of 56 pounds, including a party wall, which separated his house from that of the defendant, who denied the plaintiff's title to the wall and committed trespass upon it. It was held that, inasmuch as the only portion of the premises the title to which was in dispute, was under the annual rental of 20 pounds, the county court had jurisdiction to try the action.

In Bassano v. Bradley, 65 L.J.Q.B. 479, it was held that a county court had jurisdiction, within section 60 of the County Courts Act, 1888, to try an action for recovery of arrears of rent charge of 10 pounds a year issuing out of land, the value whereof exceeded 50 pounds a year, inasmuch as in such action the title to the rent charge was in question, and not the title to the land out of which it issued, and,

therefore, the value of the hereditaments in dispute did not exceed the sum of 50 pounds a year. The Lord Chief Justice, in delivering judgment, said that he should desire very seriously to consider the decision in the case of Stolworthy v. Powell, above referred to, before assenting to it, and that he did not take it into account in arriving at his decision, which he rested on the ground that the defendants had not satisfied him that the county court had no jurisdiction in this matter.

In Millar v. Smith, 6 O.W.R. 784, which was brought in the high court, for trespass to land, and cutting down a few trees, it was held by Boyd, C., that, as the whole land was worth over $200, and as the evidence was very loose as to the extent of the land trespassed upon, although he gave judgment for only $25 damages, he could not say, on the state of the pleadings, that the action could have been brought in the county court. See also Neely v. Parry Sound River Improvement Co., 8 O.L.R. 128.

In a later case of Fortier v. Chenier, 12 O.W.R. 5, the facts were as follows: The plaintiff's land, as described in the statement of claim, was a parcel of about four acres, and the value of it was found by the county judge to be over $200, but the actual trespass was to only a small portion of it, upon which the defendant had entered and cut down and removed some trees. The divisional court held that the plaintiff was entitled to succeed, as against the objections to the jurisdiction, on the ground that the land, the title to which was called in question, was not of greater value than $200.

The following cases were decided under statutes which excluded from the jurisdiction all actions in which the title to land was brought in question, irrespective of the value of the land or the amount claimed. They will be helpful in arriving at the meaning of the words "unless the title to the land is in question," contained in the above clause.

The defendants by an agreement under seal with one S acquired a right of user in certain land for the purpose of pasturing their cattle. There was no demise, or right of distress, or anything in the agreement to make the defendants tenants of S. There was, however, a covenant that S. would not allow his own animals, or those of others to enter upon the land in question. The question whether S. gave the defendants such an interest in the land as entitled them to impound cattle was held not to be a question of title in the sense that it would oust the jurisdiction of the county court. Graham v. Spettigue et al., 12 A.R. 2[illegible]. But see Chew v. Holroyd, 8 Ex. 249, and Armstrong v. McGourty, 22 N.B.R. 29.

In trespass, for entering plaintiff's close and taking his goods defendant pleaded not guilty, that the goods were not the plaintiff's and justification under a *fi. fa.* Title to land was not brought in question:—Held, that the plaintiff on a verdict for $175 was clearly not entitled to full costs without a certificate. Stewart v. Jarvis, 27 U.C.R. 467.

In replevin, defendants avowed under a distress for rent, to which the plaintiff pleaded that he did not hold the land as tenant, etc., as in the avowry alleged:—Held, that the title upon this plea did not necessarily come in question, and that the record therefore did not shew a cause of action beyond the jurisdiction. O'Brien v. Welsh et al., 28 U.C.R. 394.

Where in matters of tort relating to personal chattels, title to land is brought in question, though incidentally, the court has no jurisdiction. Trainor v. Holcombe, 7 U.C.P. 548.

Declaration for converting the plaintiff's dwelling house, with the doors and windows, etc. Plea, that the goods were not the plaintiff's. At the trial in the county court, it appeared that the plaintiff claimed as assignee of a mortgage of the land on which the house stood, and that the dis-

pute was, whether the house was part of the freehold. A verdict having been rendered for the plaintiff, it was afterwards set aside, on the ground that the title to land came in question, and that the case should have been stopped upon the plaintiffs' evidence:—Held, that this was right, and the judgment below was affirmed. Portman v. Patterson, 21 U.C.R. 237.

Title to land does not, on mere suggestion, necessarily come in question under a plea of not guilty by statute. The general rule is that it must be pleaded. In this case, which was an appeal from the county court:—Held, that though defendant might have shewn upon the plea of not guilty, that for want of title the plaintiff could not maintain the action for injury to his premises, yet that in the absence of such proof, or a *bonâ fide* tender thereof, the mere suggestion of it did not preclude the county court from trying the real cause of action, which was within its jurisdiction. Ball v. The Grand Trunk Railway Company, 16 U.C.C.P. 252.

A county court judge at a trial of a case, upon the application of plaintiff's counsel, struck out a count of the declaration and all pleadings relating thereto, because the pleadings thereunder ousted his jurisdiction, by bringing title to land in question:—Held, that he had the power to do so. Fitzsimmons v. McIntyre, 5 P.R. 119.

Declaration, that one A. devised the north half of lot 15 to his son W., in fee, and the south half to his wife J. for life, and after her death to W. in fee; and the plaintiffs claimed from defendant a portion of the first year's rent, which they alleged they were entitled to, and which the defendant had paid to J. after notice. Equitable plea, that W. in his will devised all his lands to the plaintiff in trust for the sole benefit of J. during her life, under which she claimed and received from them the rent:—Held, that upon these pleadings the title to land was brought in question,

and the jurisdiction ousted. Fair et al. v. McCrow, 31 U.C.R. 599.

The plaintiff sued for damages sustained by the defendant cutting timber on his own land, after having sold such timber standing to the plaintiff's assignor. It was determined by the court that the timber sold was an interest in land:—Held, that the title to land was brought in question in the action, and therefore, although the plaintiff recovered only $135, a county court would have no jurisdiction, and the costs should be on the scale of the high court. McNeill v. Haines, 13 P.R. 115. But see Muskoka Mill & Lumber Co. v. McDermott, 21 A.R., at p. 137, and Bailey v. Bleeker, 5 C.L.J. 99.

The plaintiff by his statement of claim alleged that he was and had been for more than six years the owner of certain land, which was unoccupied, and claimed damages for timber cut by the defendant on such land. The defendant by his statement of defence disputed the plaintiff's claim and set up certain facts by way of confession and avoidance. The action was brought in the high court, but the plaintiff recovered only $120 damages:—Held, that under the pleadings plaintiff was obliged to prove his title to the land, and therefore the county court would have had no jurisdiction, and the costs should be on the scale of the high court. Danaher v. Little, 13 P.R. 361.

The statement of claim alleged that the defendant was a monthly tenant of the plaintiff's land, and that the plaintiff on a certain day terminated the tenancy by notice, and claimed damages for injuries to the demised premises. The statement of defence denied the allegation that the defendant was the tenant of the plaintiff:—Held, that the title was put in issue by such denial, and as the county court would therefore have had no jurisdiction, the costs should be on the scale of the high court, although the plaintiff recovered only $75; held, also, that the question whether

the title was in issue must be determined according to the pleadings, and not according to what took place on the trial or reference. Worman v. Brady, 12 P.R. 618.

Where, in an action by a monthly tenant against his landlord and other persons for wrongful entry upon the demised premises, the landlord denied the plaintiff's tenancy:—Held, that the title to the land was brought in question, and the costs of the plaintiff were properly taxed on the high court scale, although the damages recovered were only $104. Worman v. Brady, 12 P.R. 618, and Danaher v. Little, 13 P.R. 361, *supra*, followed; Tomkins v. Jones, 22 Q.B.D. 599, specially referred to. Flett v. Way, 14 P.R. 312.

The plaintiff agreed to sell to the defendant a parcel of land for $1,750, of which $10 was paid on the execution of the written agreement. The agreement contained no provision as to possession, but the defendant went into possession as the purchaser. The plaintiff was unable to make title and the defendant continued in possession for a considerable time. The plaintiff brought a division court action for use and occupation. The defendant set up that the contract had not been rescinded when he gave up possession and that he never became tenant to the plaintiff nor liable to pay rent:—Held, that the plaintiff was bound to prove a contract, express or implied, to pay compensation for the use and occupation, and in order to do so it might have been necessary to shew when the contract of sale went off; but that was not a bringing of the title into question so as to oust the jurisdiction of the division court. That in prohibition the court must be satisfied that the title really comes in question; it is not enough that some question is raised by the defendant's notice. Purser v. Bradburne, 7 P.R. 18, distinguished. Order of Street, J., granting prohibition reversed. *Re* Crawford v. Seney, 17 O.R. 74.

In an action in the common pleas division, for trespass to lands and removal of fixtures, the plaintiff recovered a

verdict of $50. The taxing officer taxed division court costs to the plaintiff, and full costs to the defendant. The pleadings admitted an entry under an agreement as to placing fixtures, and their removal and appropriation, but put in issue their wrongful removal:—Held, that the taxing officer was right, the title to corporeal hereditaments not being in question:—Held, also, that though the defendant had failed to prove his defence, he was entitled to set off his costs. Richardson v. Jenkin, 10 P.R. 292.

S. being indebted to the plaintiffs, entered into an agreement to mortgage to them, amongst other lands, certain lands known as the Dominion Hotel property. A mortgage was on the same day executed, but by mistake the Dominion Hotel property was omitted therefrom, and a lot formerly owned by S., adjacent thereto inserted. The defendant had been the tenant of S., and after the mortgage, attorned and paid some rent to the plaintiffs, believing them to have a title to the lands. In an action for arrears of rent:—Held, that after such attornment and payment of rent, the defendant could not be heard to deny the plaintiff's title, and they being the equitable owners of the land, were entitled to recover:—Held, also, that the title not being open to question by the defendant, the county court had jurisdiction. Bank of Montreal v. Gilchrist, 6 A.R. 659.

Where, in an action of trespass for pulling down fences and for mesne profits, the plaintiff alleged his title at the time from which he claimed to recover mesne profits; and the defendant, in his statement of defence denied that he committed any of the wrongs in the plaintiff's statement of claim mentioned, and denied that he was liable in damages or otherwise on the alleged causes of action:—Held, that on these pleadings the title to land was expressly brought in question, and the jurisdiction of the county court ousted. Campbell v. Davidson, 19 U.C.R. 222; Seabrook v. Young, 14 A.R. 97.

In an action brought in the high court by a landlord against a tenant for damages for breach of the latter's covenants in a farm lease, the statement of claim alleged that the plaintiff by deed let to the defendant the land described for a term of years, and that the defendant thereby covenanted as set forth, and assigned as breaches of the covenants that the defendant did not cultivate the farm in a good, husband-like, and proper manner. By the statement of defence the defendant denied all the allegations of the statement of claim, and further alleged that the defendant had used the premises in a tenant-like and proper manner, "according to the custom of the country where the same was situate." The plaintiff recovered a verdict of $100, the action being tried with a jury. The title to the land was not brought into question at the trial, but it was contended that it came in question on the pleadings:—Held, not so; for the defendant was, on the face of the record, estopped from pleading *non demisit* and his denial could only be read as a transverse of the actual execution of the lease. Purser v. Bradburne, 7 P.R. 18, commented on:—Held, also, that the "custom" pleaded was not the "custom" meant by section 60, sub-section 4, of the Divisional Courts Act, R.S.O. 1887, c. 51, which refers to some legal custom by which the right or title to property is acquired, or in which it depends. Legh v. Hewitt, 4 East 154, followed. Held, therefore, that the action was within the competence of the division court, and that the costs should follow the event in accordance with Rules 1170, 1172. Talbot v. Poole, 15 P.R. 99.

In settlement of an action on a promissory note for $383, given for the price of liquors sold to him by plaintiff, a liquor dealer, defendant, a tavern keeper, agreed in writing to give, and gave security upon certain terms, by a conveyance of land, and a new note for the amount sued for, which was subsequently divided into three notes of $125 each:—

Held, that the title of land did not come in question. *Re* McGolrick v. Ryall, 26 O.R. 435.

The plaintiff by mistake built a line fence on the defendant's land. The defendant afterwards used the rails to build his part of the line fence on the correct line. In an action for the value of the rails taken by the defendant it was held that they were not an interest in land. *Re* Bradshaw v. Duffy, 4 P.R. 50.

In an action in a superior court for breach of covenant for quiet enjoyment in a lease, the defendant pleaded *non demisit*. The plaintiff obtained a verdict for one shilling, but a certificate for costs was refused:—Held, that the plea of *non demisit* raised a question of title, and that the plaintiff was entitled to full costs. Purser v. Bradburne, 7 P.R. 18.

In an action to recover the rent and taxes of certain land, certain facts as to the terms and conditions of the tenancy were disputed, but the defendant did not dispute the plaintiff's title. On the plaintiff obtaining a judgment for the amount claimed, the defendant applied for a prohibition on the ground that the title to land was called in question, but it was refused. *Re* English v. Mulholland, 2 C.L.T. 89.

The bare assertion of the defendant that the title to land comes in question is not sufficient to oust the jurisdiction. The judge has authority to inquire into so much of the case as is necessary to satisfy himself on the point, and if there are disputed facts, or a question as to the proper inference from undisputed facts, that is enough to raise the question of title. If the facts can lead to only one conclusion and that against the defendant, then there is no such *bonâ fide* dispute as to title as will oust the jurisdiction of the court. Moberly v. Collingwood, 25 O.R. 625.

Quaere, as to whether the title to land comes in question in an action by a licensee of timber limits against a trespasser

who denies plaintiff's title. Muskoka Mill & Lumber Co. v. McDermott, 21 A.R. 129.

(*d*) Actions for the obstruction of or interference with a right of way or other easement where the sum claimed does not exceed $500, unless the title to the right or easement is in question, and in that case also where the value of the land over which the right or easement is claimed does not exceed that amount. *New.*

As to the meaning of the words "the value of the land," see the following cases in notes to the preceding clause: Brown v. Cocking, 37 L.J.Q.B. 250; Elston v. Rose, 38 L.J. Q.B. 6; Stolworthy v. Powell, 55 L.J.Q.B. 228; Bassano v. Bradley, 65 L.J.Q.B. 479, and Fortier v. Chenier, 12 O.W.R. 5.

The corresponding section of the English County Courts Act provides that the court shall have jurisdiction "in case of an easement or license where neither the value nor the rent payable for the lands, tenements or hereditaments in respect of which the easement or license is claimed, or on, through, over or under which such easement or license is claimed, shall exceed the sum of 100 pounds by the year."

In Holworth v. Sutcliffe, 64 L.J.Q.B. 729, the plaintiff brought an action in the high court for interference by the defendant with a pipe which conveyed water to his premises across the defendant's lands, and alleged that the value of his premises exceeded the statutory jurisdiction of the county court. The defendant paid a sum of money into court, which was taken out by the plaintiff in satisfaction. On the appeal from the taxation of the plaintiff's costs, it was held that the county court would have had no jurisdiction to try the action, if it had been brought in that court.

See also Chew v. Holroyd, 8 Ex. 249.

In Sloane v. Davis, 7 N.B.R. 593, a disputed claim of an easement of right of way over land, the title to which was not in question, was held to be not within the jurisdiction of the county court.

(*e*) Actions for the recovery of property, real or personal, including actions of replevin and actions of detinue where the value of the property does not exceed $500;

As shewn by the notes to the preceding clause(*c*), the former sub-section 8 has been divided, and the portion of it conferring jurisdiction in actions of ejectment has been transferred to this clause. The special jurisdiction conferred on county courts by the former section 27, in actions between landlord and tenant, has been abolished, and all such actions will now come within this clause.

By sub-section 2 of section 30, *infra*, actions for the recovery of real property must be brought and tried in the court of the county or district in which the land sought to be recovered is situate. An action could not, therefore, be brought in the county court for land in two different counties. See McCrea v. Easton, 19 C.L.J. 331.

Section 8 of the Replevin Act, 9 Edw. VII. c. 38, has been repealed by section 8 of the Statute Law Amendment Act, 1910, and the following section substituted therefor:—

(8) The county and district courts shall have jurisdiction in replevin as is provided in the County Courts Act. R.S.O. 1897, c. 66, s. 7; 9 Edw. VII. c. 38.

As regards actions of detinue, they have been held in England to be included in "personal actions," and the court, therefore, would have jurisdiction under clause (*b*), *supra*. Leaser v. Rhys, 10 C.B.N.S. 369.

As to interpleader, see notes to section 28, *infra*.

(*f*) Actions for the enforcement by foreclosure or sale or for the redemption of mortgages, charges or liens, where the sum claimed to be due does not exceed $500;

This clause combines the provisions of sub-sections 11 and 12 of the former section 23.

Under the former equity jurisdiction of the county court, it was held in Connell v. Curran, 1 Ch. 11, that where a plaintiff filed a bill in the court of chancery to foreclose a mortgage for a sum within the jurisdiction of the county court, no costs should be allowed him, and the fact that the defendant was resident in a county other than where the land was situate would not vary this rule.

In Seath v. McIlroy, 2 Ch. 93, it was held that where the plaintiff's claim on the premises, together with the amount of a subsequent mortgage exceeded $200, it was beyond the jurisdiction of the county court.

In Hyman v. Roots, 11 Gr. 202, it was held that where a bill was filed to foreclose in respect of a demand not exceeding $200, the plaintiff was entitled to his full costs where it appeared that there was an incumbrance beyond that sum.

It is stated in Cameron on Costs, at page 69, that Con. Rule 1167, which requires all bills of costs in actions of this kind to be revised by one of the taxing officers at Toronto, has been held by the Chancellor, Meredith, C.J., and Rose, J., not to apply to such actions in the county courts.

(*g*) Partnership actions where the joint stock or capital of the partnership does not exceed in amount or value $2,000;

In Rae v. Trim, 8 P.R. 405, which was decided under the former equity jurisdiction of the county courts, it was held that the fact of title to land coming in question did not oust the jurisdiction of the court. See now, however, clauses (*c*) and (*e*), *supra*.

In Blaney v. McGrath, 9 P.R. 417, the plaintiff and defendant had entered into partnership to manufacture certain goods for the price of $2,000. The contract was not fulfilled, and the plaintiff brought an action for an account of the partnership dealings. The report found that the plaintiff had contributed to the capital $87.39 and the defendant $233.89, and that there was due from the defendant to the plaintiff $43.74. The plaintiff's costs were taxed upon the lower scale, but this ruling was reversed on appeal.

In Allan v. The Fairfax Cheese Co., 21 O.R. 598, which was decided after the former equity jurisdiction of the county courts had been repealed, and before the present jurisdiction had been restored, it was held that a county court had jurisdiction where the amount of the claim did not exceed the ordinary jurisdiction of the court, to entertain an action by a partner against his co-partners for a purely money demand, which formed part of the partnership assets, although it might involve the taking of the partnership accounts.

Under section 58 of the English County Courts Act, the jurisdiction in partnership matters is limited to the recovery of a demand not exceeding the sum of 100 pounds, which is the whole or part of the unliquidated balance of the partnership account, but by sub-section 7 of section 67, they also have jurisdiction over actions for the dissolution or winding up of any partnership in which the whole property, stock and credits of such partnership do not exceed in value 500 pounds.

(*h*) Actions by legatees under a will for the recovery or delivery of money or property bequeathed to them where the legacy does not exceed in value or amount $500, and the estate of the testator does not exceed in value $2,000;

In Rustin v. Bradley, 28 O.R. 119, it was held that this clause was not applicable to an action brought by the legatee against the devisee of land, to recover a legacy charged on the land, as the plaintiff was not seeking payment of a legacy by the legal representative of the testator or out of the testator's estate in his hands, but to enforce payment out of the land of a charge created thereon, which case was not intended to be covered and was not covered by the words of this sub-section. See Goldsmith v. Goldsmith, 17 Gr., at page 218, and notes to sub-section (*h*), *infra*.

Section 58 of the English County Courts Act gives that court jurisdiction not exceeding 100 pounds, for the amount or part of the amount of a distributive share under an intestacy or of any legacy under a will. It has been held, that this section does not give power to county courts to entertain a question of pure trust, *i.e.*, to exercise the same jurisdiction as the court of equity. The extent to which the county courts might go was stated by Parke, B., in Pears v. Wilson, 6 Ex. 833. as follows: "The question is, whether, instead of a legacy to the plaintiff, it is a legacy to the executors in trust, and whether it is a legacy within the meaning of the Act. We have had an opportunity of consulting my Lord Cranworth about it, and he agrees with us in thinking that this falls under the description of a legacy; every legacy is, in truth, a trust in the executor to pay it to the legatee in a certain sense. In this case, there was no intervention of the trustee required for the execution of the trust, it is

simply a direction to hold in trust for another; . . . and we think that the county court has jurisdiction."

In Hewston v. Phillips, 11 Ex. 699, where a testator bequeathed to the defendant all his effects on trust, *inter alia*, to pay the plaintiff 100 pounds when he should attain 21 years, and to pay interest in the meantime, with powers of maintenance, which were duly exercised, it was held, in an action by the plaintiff on attaining his majority, that the court had no jurisdiction, Alderson, B., observing that it was the case of a real trustee and not of an executor with the bare duty to pay over the money.

(*i*) All other actions for equitable relief where the subject matter involved does not exceed in value or amount $500; and

The following Con. Rules are applicable to proceedings under this clause:—

1015. Where a judgment creditor alleges that the judgment debtor has made a conveyance of his lands which is void, as being made to delay, hinder or defraud creditors or a creditor, it shall not be necessary to institute an action for the purpose of setting aside the conveyance, but a motion may be made to the court or a judge by the judgment creditor, calling upon the judgment debtor and the person to whom the conveyance has been made, or who has acquired any interest thereunder, to shew cause why the lands embraced therein, or a competent part thereof, should not be sold to realize the amount to be levied under the execution. Con. Rule 1007.

1016. Where a judgment creditor alleges that the judgment debtor is entitled to or has an interest in land which can not be sold under legal process, but can be rendered available only by proceedings for equitable execution by sale

for satisfaction of the debt, the court or a judge may, upon the application of the creditor, call upon the judgment debtor and the trustee or other person having the legal estate in the land in question, to shew cause why the said land, the interest therein of the judgment debtor, or a competent part, should not be sold to realize the amount to be levied under the execution. Con. Rule 1008.

1017. Upon any application under either of the Rules 1015 or 1016, such proceedings shall be had, either in a summary way, or by the trial on an issue, or by inquiry before an officer of the court, or by an action, or otherwise, as the court or judge may deem necessary or convenient for the purpose of ascertaining the truth of the matters in question, and whether the land or the judgment debtor's interest therein is liable for the satisfaction of the execution; but if, in a case in a county court, there is a dispute as to material facts, and the value of the land, or the debtor's interest therein appeared to be over $400, the court or judge shall direct the trial of an issue in the high court, and may name the county in which the trial is to take place, subject to any order that the high court or a judge thereof may see fit to make in that behalf. Con. Rule 1009.

1018. In county court (and division court) cases the application under Rules 1015 and 1016 shall be made to the county court, or to a judge of a county court, of the county or union of counties in which the land is situate, unless the court or judge upon the hearing of the application deems it more convenient and more conducive to the ends of justice to order that the proceedings be had and taken in the court or before a judge of the county court of the county or union of counties within the limits of which the execution was issued; in which case the clerk of the county court of the county in which the land lies shall transmit the papers filed with him, together with the order of transference, to the clerk of such other county court. Con. Rule 1010.

In Bradley v. Barber, 30 O.R. 433, it was held that, when a cause of action is within the jurisdiction of a county court, an injunction may, in a proper case, be granted to restrain an apprehended wrong, and a declaration of right may be made in a case whether substantive relief is sought or not, in as full and ample a manner as in a case in the high court.

In *re* Thompson v. Stone, 4 O.L.R. 333, where the plaintiff having recovered a judgment of $92.05 and costs against the defendant in the division court, brought an action in the county court to set aside, as fraudulent as against him, a chattel mortgage for $520 made by the defendant, it was held, on motion for prohibition, that the subject-matter involved was the amount due on the judgment, it not being alleged or proved that there were any debts of the defendant other than that due to the plaintiff, and the county court, therefore, had jurisdiction. This judgment was affirmed by the divisional court, 4 O.L.R. 585.

In Haliday v. Rutherford, 2 O.W.R. 269, in an action brought to set aside an alleged fraudulent conveyance of certain land by the defendant, a *lis pendens* was registered, and by a consent order was vacated on payment of $300 into court, with a provision that creditors should file their claims. The plaintiff's claim being $96.20, and the total claims filed amounting to $184.47, the master ruled that the plaintiff was entitled to costs on the county court scale, which ruling was upheld on appeal.

In Rustin v. Bradley, 28 O.R. 119, it was held that a county court had jurisdiction under this clause in an action brought by a legatee against the devisee of land to recover a legacy of $5 charged upon the land, as involving equitable relief in respect of a matter within the jurisdiction of the county court. It was also held that the county court of York had power to order a sale of the land which was situate in the County of Peel.

(*j*) Actions and contestations for the determination of the right of creditors to rank upon insolvent estates where the claim of the creditor does not exceed $500.

Before the passing of this clause, it was held that the county court had no jurisdiction to entertain an action for a declaration of right to rank on an insolvent estate. Whidden v. Jackson, 18 A.R. 439.

ADDITIONAL JURISDICTION OF DISTRICT COURTS.

By section 48, *infra*, as originally drafted, it repealed all the sections of the Unorganized Territory Act relating to district courts, as these latter were assimilated to the county courts in all respects by the County Judges Act and this Act. On the third reading, however, sections 9, 10 and 11 of the former Act were excepted from the repeal, apparently because they give some peculiar additional jurisdiction to certain district courts, which it was desired to preserve. These sections are as follows:—

9. (1) The said district courts shall have the same jurisdiction as is possessed by county courts.

(2) The district courts of the Provisional Judicial Districts of Algoma and Manitoulin and of Thunder Bay and Rainy River, shall in addition to the jurisdiction conferred by sub-section 1 of this section, each have jurisdiction to hold plea subject to appeal:—

(*a*) In all actions relating to debt, covenant and contract, provided always where the case is beyond the jurisdiction of county courts that the contract was made within the district or the cause of action arose therein, or the defendant resides therein.

(*b*) In replevin where the value of the goods or other property or effects distrained, taken or detained, does

not exceed the sum of $400, and the goods, property or effects to be replevied are in the said district.

(c) In all other personal actions where the amount claimed does not exceed $400.

(d) For the recovery of land situate in the district.

(3) After a trial in an action for the recovery of land or in replevin where the value of the goods claimed exceeds $200, or in any other case where the cause of action is beyond the jurisdiction possessed by county courts, and a verdict or judgment exceeding $200 is obtained, any party entitled to move to set aside or vary the verdict or judgment or to enter nonsuit may, if he so desires, instead of moving in the district court and without removing the cause into the high court by certiorari or otherwise, move in the high court for such rule or order as he claims to be entitled to. Subject to rules the motion shall be made in the same manner and subject to the like limitations as to time and otherwise as the motion would have been subject to if the action had been in the high court and had been tried at a sittings thereof, and the judgment or order of the high court shall be acted upon as if it were a judgment or order of the said district court. The high court shall have jurisdiction to make any order or give any judgment which could be made or given in the cause by the district court.

(4) Where a party is entitled and desires to move under the next preceding sub-section he shall notify the clerk of the district court in writing to transmit the record or certified copy of the pleadings and any exhibits filed at the trial to the central office of the high court at Toronto, and subject to any general rules, the subsequent practice shall be the same as in case of a trial in the high court. 60 V. c. 29, s. 10.

10. (1) The district courts of the Provisional Judicial Districts of Algoma and Manitoulin, and of Thunder Bay and Rainy River shall have the same jurisdiction as the high court with respect to injunctions restraining the committing

of waste or trespass on property by unlawfully cutting, destroying or removing trees or timber and with respect to incidental relief, and the practice in the exercise of such jurisdiction shall be the same as nearly as may be as the practice of the high court.

(2) The high court or a judge thereof, on the application of any party to the proceedings made on notice, may order that the whole proceedings be transferred to the high court, and in that case all papers filed in the district court shall be transmitted by the clerk or other proper officer of the district court to the central office of the high court; and the action shall thenceforth be continued and prosecuted in the high court as if it had been originally commenced therein.

(3) The order may be made on such terms as to payment of costs, giving security and otherwise as the court or judge thinks fit.

(4) No such case shall be transferred unless the value of the subject-matter or the damage to either party appears to amount to upwards of $1,000, nor unless the case appears to the court or judge to be one which ought to be tried in the high court. 6 V. c. 19, s. 11.

COSTS IN ACTIONS BEYOND THE JURISDICTION OF COUNTY COURTS.

11. (1) Where the amount claimed in any action in the said district courts of the Provisional Judicial Districts of Algoma and Manitoulin and of Thunder Bay and Rainy River, or where in the case of an action for the recovery of land or in replevin the subject-matter of the action, as appearing in the writ in the action or in the affidavit filed to obtain the order in replevin, is beyond the jurisdiction of the county courts in other parts of Ontario, costs to a successful defendant shall be taxed according to the high court tariff.

(2) In like manner where the plaintiff recovers in respect to a cause of action beyond the jurisdiction of the county courts, costs shall be taxed to him according to the high court tariff, subject, however, to his obtaining the certificate or order of the judge where in a like case such certificate or order is required in the high court.

(3) In respect to any action within the provisions of subsection 1 of this section the solicitor of an unsuccessful plaintiff shall be entitled to charge his client county court costs only, unless he was instructed in writing by such client to sue in respect to a matter beyond the jurisdiction of the said county courts, in which case the said solicitor shall be entitled to charge costs according to the high court tariff. 60 V. c. 19, s. 12.

In McQuaid v. Cooper, 11 O.R. 213, it was held that the jurisdiction conferred on the district court of Thunder Bay by the above section 9 was not subject to the exceptions to the general jurisdiction of the county courts, and that, therefore, that district court had power to try actions in which the title to land came in question.

In Central Trust Co. v. Algoma Steel Co., 6 O.L.R. 464, the plaintiffs, being mortgagees of land, issued out of the district court of Algoma, where the land was situate, a writ endorsed with a claim to "recover possession" of the land, "and for an order that the defendants do forthwith deliver up possession" thereof:—Held, that the endorsement was one for "the recovery of land situate in that district," within the meaning of the above section 9:—Held, also, that the fact that the plaintiffs had brought an action in the high court for a declaration of right in regard to the same land, in which they might have claimed the same relief as in the other action, was not a ground for enjoining the plaintiffs from proceeding in the district court.

In Neely v. Parry Sound Imp. Co., 8 O.L.R. 128, an action was brought in the high court for trespass to land in

the Parry Sound district, and the title was brought in question, though no evidence was given of its value. It was held that, as the above section 9 did not apply to that district, the plaintiff was entitled, on a judgment for $100 damages, to costs on the high court scale.

In Schaeffer v. Armstrong, 8 O.W.R. 564, where the action was brought in the district court of Manitoulin, for conversion of logs, etc., and judgment was obtained for $258 but only county court costs were allowed, the ruling as to costs was confirmed by the divisional court.

In Drewry v. Percival, 1 O.W.N. 564, a judgment was obtained in the district court of Rainy River for $1,039, and an appeal to the divisional court was dismissed. On a further appeal being taken to the court of appeal, it was objected that there was no jurisdiction in the latter court to hear an appeal from the district court, and this objection was sustained, with costs as of a motion to quash only.

(2) Where a defendant intends to dispute the jurisdiction of the court on the ground that the action, though otherwise within the proper competence of the court, is not within it because of the amount claimed or of the value of the property in question or of the amount or value of the subject matter involved or, in the cases mentioned in clauses (*g*) and (*h*) of sub-section 1, because the joint stock or capital of the partnership exceeds in amount or value $2,000, or the estate of the testator exceeds in value $2,000, he shall in his appearance state that he disputes the jurisdiction of the court and the ground upon which he relies for disputing it; and, in default of his so doing, unless otherwise ordered by the court or a judge, the question of jurisdiction shall

not afterwards be raised or the jurisdiction be brought in question.

(3) Where the notice mentioned in the next preceding sub-section is given, the plaintiff may on præcipe require all papers and proceedings in the action to be transmitted to the proper office of the high court in the county or district in which the action was brought, and it shall be the duty of the clerk of the county or district court forthwith to transmit the same to such office.

(4) When the papers and proceedings so transmitted are received at the proper office of the high court, the action shall *ipso facto* be transferred to the high court.

(5) Where the plaintiff does not exercise the right conferred by sub-section 3 the defendant may after the expiration of ten days from the entry of appearance apply to a judge of the high court for an order transferring the action into that court. *New.*

(6) Where the court or a judge makes an order under the provisions of sub-section 2 allowing the defendant to question the jurisdiction of the court the court or judge may direct the action to be transferred into the high court on such terms as to costs and otherwise as may be deemed just.

(7) Where an action is transferred into the high court under the provisions of this section, if the plaintiff is awarded costs, unless otherwise ordered by the court or a judge, they shall be taxed

according to the scale of the high court, whether or not the action be in fact within the proper competence of the county or district court. 9 Edw. VII. c. 28, s. 21.

For forms of appearance and order, see forms Nos. 4 and 5.

See Brownridge v. Sharpe, 13 O.W.R. 508, where, under the former practice, an order was made after judgment, and upon the granting of a new trial by the divisional court, for the transfer of the action to the high court.

23.—(1) Where the defendant pleads a set-off or counterclaim either party, within six days after the plaintiff has delivered his reply to such defence of set-off or his defence to the counterclaim, may apply to a judge of the high court for an order transferring the action and counterclaim into the high court on the ground that such set-off or counterclaim involves matter beyond the jurisdiction of the court.

(2) The judge, if satisfied that the set-off or counterclaim involves matter which exceeds the jurisdiction of the court, may order the transfer upon such terms as to costs and otherwise as he may deem just.

(3) If no such application is made within the time limited, or if an application so made has been refused, the jurisdiction of the court to hear and determine the whole matter involved in the set-off or counterclaim shall be deemed to be established. *See* R.S.O. 1897, c. 55, s. 30.

For form of order see form No. 6.

The following provision is contained in the Judicature Act as to transferring actions to the high court:—

186. In any case in a county or division court where the defence or counterclaim of the defendant involves matter beyond the jurisdiction of the court, the high court or any judge thereof, may on the application of any party to the proceeding, order that the whole case be transferred from such court to the high court, and thereupon all the proceedings in such case shall be transmitted by the clerk or other proper officer, of the county or division court to the said high court; and the same shall thenceforth be continued and prosecuted in the high court as if it had been originally commenced therein."

This section supersedes, and makes a radical change in the practice established by section 29 of the former Act, which was as follows:—

29. Where in a proceeding before a county court any defence or counterclaim of the defendant involves matter beyond the jurisdiction of the court, such defence or counterclaim shall not affect the competence or the duty of the court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon such counterclaim. R.S.O. 1887, c. 27, s. 22.

Under the former Act it was held that the power to grant relief in respect of such counterclaim was limited to the same amount as the plaintiff had claimed in the action: Davis v. Flagstaff Mining Co., 3 C.P.D. 228; Wallace v. People's Life Insurance Co., 30 O.R. 438; and that the relief which a defendant could obtain against a third party brought in under Con. Rule 209, was similarily limited to

protection against the plaintiff's demand: Neald v. Corkindale, 4 O.R. 317; and that a defendant who had obtained a judgment in a county court on a counterclaim, the amount of which was beyond the jurisdiction of that court, might sue in the high court for the balance, and the defendant in the high court was estopped from denying the cause of action, the only question being the amount of damages: Webster v. Armstrong, 54 L.J.Q.B. 236.

Sub-section (3) of the present section will evidently permit of the trial of the entire set-off or counterclaim in the county court, no matter what may be the amount thereof, unless the prescribed proceedings are taken to transfer the action to the high court.

24. Where an action has been transferred into the high court or into another county or district court under any provision of this Act, it shall be in the same plight and condition as it was in at the time of the transfer, and thereafter may be proceeded with as if it had been commenced in the court into which it has been so transferred. R.S.O. 1897, c. 55, s. 34; 4 Edw. VII. c. 10, s. 12.

It was held in Hankey v. G.T. Ry. Co., 17 U.C.R. 472, before the legislation upon which this section is based, that where a cause was removed from the county court after issue joined, the plaintiff should declare *de novo*.

It was held in Corley v. Roblin, 5 U.C.L.J. 225, that the defendant was entitled to costs on the high court scale, although the action had been transferred at his request, as no terms were imposed.

In Struthers v. Green, 14 P.R. 486, it was held that the provisions of former Rule 1219. as to the lower scale of costs, were applicable to an action transferred from the

county court to the high court, and that the costs of the proceedings after the transfer should be taxed upon the lower scale by reason of the plaintiff seeking equitable relief, and the subject-matter involved not exceeding $200.

25. Where it appears in an action brought in a county or district court that such court has not cognizance thereof, but that the court of some other county or district has jurisdiction to try the same, the judge before whom the action is pending may, at any time before or during the trial thereof, order the action to be transferred to such other county or district court upon such terms as to costs and otherwise as he may deem just. 4 Edw. VII. c. 10, s. 11.

For form of order, see form No. 7.

Prior to this enactment, there was no provision for the transfer of such an action from one county court to another, the provisions of section 30, *infra*, and Rule 1219, as to change of place of trial being applicable only to cases where "the action is properly pending in the county court from which the proceedings are to be removed." See Howard v. Herrington, 20 A.R., at page 179, and notes to section 30, *infra*.

In Corneil v. Irwin, 2 O.W.R. 466, which was decided before the enactment of this section, and in which the action had been brought in the wrong county, the power of transferring to another court now given by this section was assumed by the master in chambers, apparently because Rule 529(*b*) is applicable to county courts; but the above decision of the court of appeal was evidently not brought to his attention.

In Leach v. Bruce, 9 O.L.R. 380, however, which was decided some months after the above section was passed, the

master in chambers, in a similar case, followed his previous decision in Corneil v. Irwin, *supra*, without making any reference to this section.

26. Prohibition shall not lie in respect of an action or counterclaim which may be transferred under the provisions of this Act into the high court or from one county or district court into another county or district court. *New.*

This section effects a very important and salutary change in the practice. Heretofore prohibition was frequently resorted to when the county court, or a particular county court, had not jurisdiction in the action, instead of an application being made to transfer the action to the high court or to another county court. See sections 22(5) and 23, *supra*, and section 29, *infra*, as to cases in which the action may be transferred to the high court, and section 25, *supra*, as to the transfer of actions to another county court.

27.—(1) Where it appears that the claim of the plaintiff is for an amount beyond the jurisdiction of the court, he may by writing signed by him and filed, upon such terms as the judge deems proper as to costs and otherwise, abandon the excess and in such case the plaintiff shall forfeit such excess, and shall not be entitled to recover it in any other action. R.S.O. 1897, c. 55, s. 26.

(2) A defendant shall have the like right in respect of his set-off or counterclaim. *New.*

Prior to the passing of this section, it was held in *Re* MacKenzie v. Ryan, 6 P.R. 323, that the plaintiff could not, after action brought, abandon any part of his claim, so as

to give the court jurisdiction, though he might have done so in his claim.

In Cleveland v. Fleming, 24 O.R. 335, it was held that where the claim for an action beyond the jurisdiction of the division court was brought in that court, the judge at the trial had no power to strike out the excess so as to bring the amount within the jurisdiction.

In Thompson v. Eede, 22 A.R. 105, however, the plaintiff was allowed, on application to amend, to abandon one of two unliquidated claims, each within, but together beyond the jurisdiction of the county court, on condition that he should abandon his right to bring another action for the portion of his claim withdrawn.

Partial prohibition has been granted in several cases to prevent the enforcement of judgment for the excess over the jurisdiction, where such excess was caused only by the addition of interest. *Re* Elliott v. Biette, 21 O.R. 595; *Re* Trimble v. Miller, 22 O.R. 500, and *Re* Lott v. Cameron, 29 O.R. 70.

In Meeke v. Seobell, 4 O.R. 553, it was held that a plaintiff in a division court, cannot abandon a part of his claim in an action founded partly on contract and partly on tort, without indicating how much of the abandonment is applicable to each.

In Jarvis v. Leggatt, 10 C.L.T. 155, the plaintiff sued in a division court on a solicitor's bill amounting to $135.38, abandoning the excess thereof over $100. The trial judge deducted from plaintiff's bill $71.53, and entered judgment for $63.86, being the balance of the whole claim. An application for prohibition was refused, as it was held that what the trial judge did was tantamount to deducting $36.14 from plaintiff's claim as sued, in addition to the amount abandoned on entering the suit.

In Winger v. Sibbald, 2 A.R. 610, it was held that the commencement of a suit for part only of an entire claim is

not *per se* a release of the excess, but the part so abandoned cannot be sued for after the recovery of judgment in such suit.

In Davidson v. Belleville & North Hastings Ry. Co., 5 A.R. 315, it was held that, where the plaintiff sued for two items of wages amounting to $320, and was allowed to amend by striking out one item, leaving an amount within the jurisdiction of the county court, that court had power to grant judgment for the amount remaining, but that such judgment was a bar to any future action for work done at any time before the commencement of the suit.

28. The court shall, as regards all causes of action within its jurisdiction, have power to grant and shall grant such relief, redress or remedy, or combination of remedies, either absolute or conditional, including the power to grant vesting orders and to relieve against penalties and forfeitures, and shall give such and the like effect to every ground of defence or counterclaim, equitable or legal, by the same mode of procedure, and in as full and ample a manner as might and ought to be done in the like case by the high court. R.S.O. 1897, c. 55, s. 28.

In Plummer v. Colwell, 15 P.R. 144, it was held, in an action to restrain the defendants by injunction from negotiating a promissory note for $230, and to compel them to deliver it up to the plaintiff, or for damages for its detention, that the action sounded in tort and not in contract, and was not within the jurisdiction of the county court.

In Martin v. Bannister, 4 Q.B.D. 491, it was held that the provisions of the Judicature Act enabled county court judges, in all causes of actions within their jurisdiction, to grant injunctions in as full and complete a manner as if they

were judges of the high court, including the enforcing of obedience by attachment.

The opinion had been formerly entertained that a county court could not grant an injunction if that were the only remedy claimed. The court of appeal expressly declined to decide this question in the cases of Shaw v. Jersey, 4 C.P.D. 329, and Frearson v. Loe, 9 Ch. D. 48, but in the recent case of Stiles v. Eccelstone (1903), 1 K.B. 544, it was held that the county court had jurisdiction where an injunction only is claimed, if the claim for damages (supposing it to have been made) must necessarily have been within the jurisdiction in point of amount.

The following Con. Rules govern interpleader applications in the county courts, which presumably come under this section, as sub-section 6 of the former section 23, has not been re-enacted:—

1123. Relief by an interpleader may be granted in the county courts:—

(1) 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; and in such case,

(*a*) Where the applicant is being so sued in a county court the application may be to the judge of the county court in which the action is pending; and,

(*b*) Where the applicant is not being sued and the debt, money, goods or chattels in question do not exceed in value $200, the application may be to the judge of the county court of the county in which the applicant resides or in which the money, goods and chattels are situate.

See *Re* Anderson v. Barber, 13 P.R. 21.

(2) Where the applicant is a sheriff and claim is made to any money, goods, or chattels 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 writ was issued; and in such case the application may be made to the judge of the county court of the county in which such money, goods or chattels are so taken, or intended to be taken, notwithstanding that the writ may have been issued from another county court, or that writs may have been issued from two or more county courts. Rules 23 June, 1894 (*a*) and (*b*).

See *Re* Gould v. Hope, 20 A.R. 347.

1125. (1) Where the amount claimed under or by virtue of writs of execution, in the sheriff's hands, issued out of one or more courts, does not exceed the sum of $400, exclusive of interest and sheriff's costs, or when goods seized are not, in the opinion of the judge, or other person making the order, of the value of more than $400, the order directing an issue to be tried, may direct that the issue shall be drawn up and tried in the county court of the county in which the issue would, under the provisions of Rule 1124 be tried, and in such case the issue shall be drawn up, filed and tried in the county court, and all subsequent proceedings therein, up to and inclusive of judgment and execution, shall be had and taken in the county court which shall, where any of the writs of execution were issued out of the high court, have jurisdiction in the premises as fully as though the same had issued out of the county court.

(2) Where an application is made for an order, under this rule, upon the ground that the goods seized are not of the value of more than $400, a list of the goods and of the value placed upon them shall be set out in the affidavit, upon which the application is based. Con. Rule 1163.

See Close v. Exchange Bank, 11 P.R. 186.

1126. 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. Rules 23 June, 1894, 1370.

1127. The proceedings for and relating to the order for costs, and for obtaining money out of court, when the same has been paid into court by the sheriff, and for such other purposes as may be necessary, may, in the cases provided for in the Rules 1125 and 1126, be taken either in the original cause or before the judge of the county court, or division court, as the case may be, who tried the issue, and he shall have power and authority to make such order in the premises as a judge has heretofore had in such cases. Con. Rule 1164; Rules 23 June, 1894, 1371.

1128. In respect of all such proceedings had in the county court, or division court, the costs and disbursements shall be taxed upon the county court, or division court scale. Con. Rule 1165; Rules 23 June, 1894, 1372.

See also Coyne v. Lee, 14 A.R. 503; Clancey v. Young, 15 P.R. 248; Teskey v. Neil, 15 P.R. 244; Frost v. Lundy, 14 C.L.T. 191; Connell v. Hickock, 15 A.R. 518.

Section 40(1), clause (*b*), provides for appeals in interpleader proceedings.

The following Con. Rules respecting attachment of debts specifically apply to county courts:—

917. (1) Where the debt claimed to be due or accruing from a garnishee is of the amount recoverable in a county court, the order to appear, made under Rule 911, shall be for 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 in writing by such judge; and the order shall be served on the garnishee with written notice of the day and place appointed. Con. Rule 940.

(2) If the garnishee does not forthwith pay the amount due by him, or an amount equal to the judgment debt, or appears and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear before the judge named in the order at the day and place appointed, the judge, on proof of service of the order and notice of the appointment having been made two clear days previous, may order payment; and execution may issue out of the county court. Con. Rule 941.

(3) If the garnishee disputes his liability, the judge may order that the judgment creditor be at liberty to proceed against the garnishee according to the usual practice of the county court, for the alleged debt, or for the amount due to the judgment debtor if less than the judgment debt, and for costs. Con. Rule 942.

919. In county court cases the power conferred by Rules 917 and 919 may be exercised by the judge, although the garnishee does not reside within his county. *New.*

See Millar v. Thompson, 19 P. R. 294.

Section 40(1), clause (*b*), provides for appeals in proceedings for attachment of debts and against garnishees.

29. Except in the cases mentioned in sub-sections 3, 5 and 6 of section 22, and in section 23, no action shall be removed by order of certiorari, or otherwise, into the high court unless the debt or damages claimed amount to upwards of $100, and then only on affidavit and by leave of a judge of the high court, if it appears to the judge fit to be tried in the high court, and upon such terms as to costs, giving security for debt or costs and otherwise as he deems just. R.S.O. 1897, c. 55, s. 33.

For form of order see form No. 8.

Section 186 of the Judicature Act is as follows:—

186. In any case in a county or division court where the defence or counterclaim of the defendant involves matter beyond the jurisdiction of the court, the high court or any judge thereof, may on the application of any party to the proceeding, order that the whole case be transferred from such court to the high court, and thereupon all the proceedings in such case shall be transmitted by the clerk or other proper officer, of the county or division court to the said high court; and the same shall thenceforth be continued and prosecuted in the high court as if it had been originally commenced therein. 58 V. c. 12, s. 186.

The following sub-section has been added thereto by sub-section (5), of section 7, of the Statute Law Amendment Act, 1910:—

186*a*. Where a plaintiff has brought an action of the proper competency of a county or district court in the high court, the action may, by leave of a judge, be transferred at any time before the trial to the county or district court on such terms, including payment of the additional costs incurred by the defendant owing to the action having been brought in the high court, as to the judge may seem just.

For form of order, see form No. 9.

Sections 65, 66 and 69 of the English County Courts Act permit the transfer of actions of contract and of tort and equitable actions from the high court to the county court under certain circumstances.

As to what have been considered good grounds for the removal of actions under section 126, from the English county courts to the high court, see Longbottom v. Longbottom, 8 Ex. 203; Potter v. G. W. Collier Co., 10 T.L.R. 380; Rees v. Williams, 7 Ex. 51; Box v. Green, 9 Ex. 503.

In Banks v. Hollingsworth, 62 L.J.Q.B. 236, it was held that the words "fit to be tried" in the Borough and Local Courts of Record Act mean "ought to be tried," and that the question whether an action was fit to be tried in the superior court was a matter of opinion of the judge, and that he had discretion in all cases as to whether an action should be removed into the superior court. See also Cherry v. Endean, 55 L.J.Q.B. 292.

In Holmes v. Reeve, 5 P.R. 58, it was held that where a defendant knew all the facts of the case before the day of trial, but nevertheless, argued it and obtained an opinion from the judge, the case should not be removed, and the fact that the judge was desirous that the case should be disposed of in the superior court could make no difference.

In *Re* Knight v. Medora and Wood, 11 O.R. 138, it was held that where the case had been tried before the division court judge, who gave his decision in favour of the plaintiff, but formally reserved the giving of judgment to a subsequent day to enable the defendants to move for certiorari, the defendants could not thus wait and take the chances of a decision in their favour, and finding it adverse, apply for a writ of certiorari.

In Sherk v. Evans, 22 A.R. 242, it was held that an action could not be removed from a county court to the high court after judgment in the former court in favour of the plaintiff leaving the judgment in force with the right to either party to move against it in the high court.

Sections 69, 70 and 71, of the Division Courts Act, provide for the transfer of actions from that court to the high court in certain cases. No provision, however, is made for the transfer of such actions from the division court to the county court, even where the latter court would have jurisdiction to entertain them, with the single exception that, by section 71 above mentioned, where a defence or counter-

claim involves matter beyond the jurisdiction of the division court, the judge may order that the case be transferred to the high court or to the county court of the county within which the division is situate.

For form of such latter order, see form No. 10.

30.—(1) Unless by consent of the parties, or unless the place of trial is changed, actions under clauses (*c*) and (*d*) of section 22, shall be brought and tried in the court of the county or district in which the land is situate, and actions under clause (*g*) of that section shall be brought and tried in the court of the county or district where the partnership has or had its principal place of business, and actions under clause (*h*) of that section shall be brought and tried in the court of the county or district where letters probate or of administration have issued, or where the deceased resided at the time of his death.

(2) Actions for the recovery of real property shall be brought and tried in the court of the county or district in which the property sought to be recovered is situate. R.S.O. 1897, c. 55, s. 36.

The actions under the above mentioned clauses are as follows:—

(*c*) For trespass or injury to land.

(*d*) For obstruction of an easement.

(*g*) Partnership actions, and

(*h*) Actions by legatees under a will.

Section 53 of the Municipal Act, R.S.O. 1897, c. 223, which section was repealed by 3 Edw. VII. c. 18, s. 13, and subsequently re-enacted by 6 Edw. VII. c. 34, s. 2, provides as follows:—

39*n*. (1) If, upon a dissolution of a union of counties, there is pending an action, or other civil proceeding in which the county town of the union has been named as the place of trial, the court in which the action or proceeding is pending, or any judge who has authority to make such orders therein, may, by consent of parties, or on hearing the parties upon affidavit, order the place of trial to be changed, and all records and papers in the action or proceeding to be transmitted to the proper officers of the new county.

(2) In case no such change is directed, all such actions and proceedings shall be carried on and tried in the senior county."

See McKenzie v. Scott, 15 O.W.R. 342.

With regard to the venue in certain other actions, see R.S.O., c. 88, s. 15, as to actions against justices of the peace, or other public officers, for anything done in performance of their duty; R.S.O., c. 93, s. 4, as to actions against justices of the peace for not returning convictions; R.S.O., c. 318, s. 89, as to actions by a person confined as a lunatic; and 9 Edw. VII. c. 38, s. 8, as to actions of replevin. In all these cases, the local venue is preserved by the exception contained in Con. Rule 529(1), which is "subject to any special statutory provisions."

Con. Rule 1219 is as follows:—

1219. 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 according to the practice in force in the high court; 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. Con. Rule 1260.

In Brigham v. McKenzie, 10 P.R. 406, doubts were thrown upon the jurisdiction of the master in chambers to make an order under this rule, so the words "or the master in chambers" were inserted on the consolidation of the rules in 1888. Boyd, C., in his judgment on appeal from the master, expressed the opinion that an application of this kind was neither a "matter" nor a "proceeding" in the high court.

In Ferguson v. Golding, 15 P.R. 43, it was held that where a motion is made to a master in chambers under this rule to change the venue, the papers should not be intituled in the high court of justice, but in the county court.

In McAllister v. Cole, 16 P.R. 105, it was held that where an application is made to the master in chambers under this rule to change the place of trial, no appeal lay from his order thereon, and if the application was made to a judge in chambers, no appeal lay from his decision to a divisional court. This was followed in Cameron v. Elliott, 17 P.R. 415, reversing Milligan v. Sills, 13 P.R. 350. In consequence of these decisions the words "subject to appeal in either case, as if the case were in the high court" were inserted on the last consolidation.

In O'Donnell v. Duchenault, 14 O.R. 1, it was held, under the statute then in force, that the venue in an action of replevin in a county court, except for goods distrained, might be changed to any other county under section 155 of R.S.O., c. 50 (now Rule 1219.) Since that decision, however, the statute has been changed, and now by 9 Edw. VII. c. 38, s. 8, all county court actions of replevin for property "distrained, taken or detained" must be brought in "the county wherein the property was distrained, taken or detained."

In Hicks v. Mills (unreported), an order was made by the master in chambers changing the venue from the County of York to the County of Wentworth, and on appeal to Street, J., this order was reversed and the venue restored to Toronto. On appeal to the divisional court, the defendant contended that Street, J., had no jurisdiction to entertain the appeal, but if he had jurisdiction, a further appeal lay to the divisional court. The plaintiff contended that no appeal lay from Street, J., to the Divisional Court. The appeal was dismissed on the merits, the court refusing to interfere with the discretion exercised by the judge in chambers. (Divisional Court, March 16th, 1898.) After the trial an application was made to Street, J., 18 C.L.T. 223, for a direction as to the scale of costs on the application for change of venue, and it was held that the costs of the application to the master in chambers should be taxed on the county court scale, but the costs of the two appeals should be taxed on the high court scale.

In Burke v. Smith (unreported), an order was made by the master in chambers changing the venue in a county court action from Stratford to Walkerton. On appeal to Rose, J. (June 7th, 1898), this order was reversed and the venue restored to Stratford, on the ground that the difference in expense was not sufficient to warrant the change. It was also held that there is no difference of principle between an action in the high court and one in the county court as to the determination of the question of venue. In both the preponderence of convenience is to govern. See also Mahon v. Nicholls, 31 U.C.C.P. 22, and Slater v. Purvis, 10 P.R. 604.

In Palmer v. Hampton (unreported), the defendant moved before Meredith, C.J. (February 3, 1899), to change the venue in a county court action from Toronto to Belleville, and also appealed from an order made by the judge of the county court of York under Rule 531, providing for

the trial of different questions of fact at different times and places. It was held that no appeal lay from the order of the county court judge, although it should not have been made while the motion to change the venue was pending. An order was made changing the venue to Belleville, upon the defendant consenting to have the case tried without a jury, if the plaintiff desired it.

It was held in Corneil v. Irwin, 2 O.W.R. 466, that paragraph (*b*) of sub-section 1, of Rule 529, which provides that where the cause of action arose and the parties reside in the same county, the place of trial shall be the county town of that county is applicable to county courts as well as to the high court. In this case the action was brought in the county court of Elgin, although the cause of action arose, and all the parties resided in the County of Middlesex, and an order was made transferring the action to the county court of the latter county.

This decision, which was given prior to the enactment of section 28, *supra*, seems to be in conflict with the decision of the court of appeal in Howard v. Herrington, 20 A.R. 175, *supra*, note to section 28, as regards the right to transfer to another county court. In the latter case the defendant appealed from the judgment of the county court on the ground that the action, which was one of replevin, had been brought in the wrong county, and Osler, J.A., said, at page 179: "I do not see that under Rule 1260 (now 1219) there would be power to change the place of trial from one county to another in a case thus brought in a county court which had no jurisdiction to entertain it. I mean that this rule does not aid the plaintiff, as it assumes that the action which is to be transferred to another county court is properly pending in the county court from which the proceedings are to be removed. Possibly the plaintiff might, before judgment, have had the case removed into the high court, as provided by 54 V. c. 14 (O.), but in this appeal all that we can con-

sider is whether the court below had jurisdiction." See, however, Leach v. Bruce, 9 O.L.R. 380, and notes to section 28, *supra*.

In Noxon v. Cox, 6 O.L.R. 637, the master in chambers refused to change the venue from the county court of Oxford to the county court of Huron, because in the agreement upon which the action was based, it was provided that, on default of payment, suit might be entered and tried in the Oxford county court.

In Hisey v. Hallman, 2 O.W.R. 403, the master in chambers refused to change the venue from the county court of York to the county court of Waterloo, on the plaintiff undertaking to pay such amount as the trial judge might consider reasonable to meet the extra expense caused by the trial taking place at Toronto. See also Baker v. Weldon, 2 O.W.R. 432.

After an order has been made changing the venue, and the papers have been transmitted, the judge of the court in which the writ issued has no further jurisdiction. Mahon v. Nicholls, 31 U.C.C.P., at p. 28; Hornby v. Hornby, 3 U.C.R. 274.

For form of order, see form No. 20.

31. An action by or against a judge shall not be brought in the court of which he is a judge, but shall be brought in the court of a county or district adjoining that in which such judge resides. R.S.O. 1897, c. 55, s. 37.

Section 3 of the Creditors Relief Act, 9 Edw. VII. c. 48. is as follows:—

"Where a judge is disqualified to act in a matter arising under this Act, a judge of the county court in an adjoining county shall have jurisdiction to act in his place." Section 3

of the Assignments and Preferences Act, 1910, is exactly similar.

In Jones v. Wing, 3 O.S. 36, it was held, before the passing of the above section, that where two plaintiffs, one of whom was sole judge of the district court of the district in which the defendant resided, sued in the King's Bench on a cause of action within the district court jurisdiction, they were entitled to full costs.

In an anonymous case reported in 4 P.R. 310, it was held that the fact of a defendant being a county court judge, where the plaintiff might otherwise have proceeded under the Over-holding Tenants Act, and thereby have obtained a more summary remedy, was a sufficient reason to change the place of trial in an action of ejectment. *Quaere*, whether the circumstance of defendant being a county court judge was not in itself sufficient to give plaintiff the right to have the place of trial changed on grounds of public policy.

In *Re* The Judge of the County Court of Elgin, 20 U.C.R. 588, a garnishee summons having issued in the county court, one H. opposed it as assignee of the judgment debtor, and in answer to his claim an affidavit was filed in which appeared that the judge was interested with H. in his claim. The judge then declined to act further in the matter, and signed a memorandum stating, as an additional reason for refusing to proceed, that H. was his brother-in-law. The court, under these circumstances, refused a mandamus to compel the judge to dispose of the case.

32. Subject to the provisions of the Judicature Act and to Rules of Court, the practice and procedure of the high court shall apply to the county and district courts. R.S.O. 1897, c. 55, s. 40.

By section 122(*b*) of the Judicature Act, a majority of the judges of the supreme court might make rules "for

regulating the pleading, practice and procedure in the high court of justice and the court of appeal." By section 7(2) of the Statute Law Amendment Act, 1910, the words, "and in the county, district and surrogate courts," have been added thereto.

In *Re* Oliver v. Fryer, 7 P.R. 325, it was held that a practice, adopted in the county court of York, requiring the filing of a promissory note before entering a judgment by default in an action thereon, was contrary to law, and a mandamus was granted to compel the signing of such judgment without the filing of the note.

In *Re* Hill v. Telford, 12 O.W.R. 1090, it was held that a judge of a county court had jurisdiction to make an order for security of costs under R.S.O. 1897, c. 89, in an action brought by an Indian, and that the manner in which the judge exercised the jurisdiction was not a subject for prohibition, but for his own sound discretion.

As to the proper practice in certain matters connected with trials in the county court, see Stewart v. Rounds, 7 A.R. 575; Williams v. Crow, 10 A.R. 301; Ferguson v. McMartin, 11 A.R. 731, and McConnell v. Wilkins, 13 A.R. 438.

Con. Rules 1212 to 1223 inclusive apply only to county and district courts. These rules will be found under appropriate sections in different parts of this work with the exception of Rule 1216, which provides that "these rules, and the practice and procedure in actions in the high court of justice shall apply and extend to actions in the county court," and also except the following rules, which govern the payment of money into the county court:—

1221. (1) Money to be paid into the county court or surrogate court of any county by any person, 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 this 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 privity of the clerk or registrar (as the case may be) of the court, and in no other manner; and such money shall only be withdrawn on the order of the court or a judge thereof, with the privity 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. Con. Rule 1262; Rules 23 June, 1890, 1267.

1222. The clerk and registrar of said courts shall each keep a book or books containing an account of all moneys 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 moneys so paid in and withdrawn respectively and a statement of the condition of the various accounts upon the thirty-first day of the preceding December, 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 made before a justice of the peace or commissioner for taking affidavits, according to form No. 212. Con. Rule 1263.

1223. The book so to be kept shall be open for inspection within 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 payment to the clerk or registrar of the sum of twenty cents

for such inspection or certificate, and the sum of ten cents per folio for such extract. Con. Rule 1264.

COSTS WHERE NO JURISDICTION.

38. Where the plaintiff fails to recover judgment by reason that the court has not jurisdiction, the court shall nevertheless have jurisdiction over the costs of the action or other proceeding, and may order by and to whom the same shall be paid. R.S.O. 1897, c. 55, s. 42.

Con. Rule 1215 is as follows:—

1215. 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, and the recovery of the costs so ordered to be paid may be enforced by the same remedies as the costs in actions or proceedings within the proper competence of the said courts respectively are recoverable. Con. Rule 1256.

Prior to this enactment, no costs could be recovered by the defendant where the plaintiff failed for want of jurisdiction. Powley v. Whitehead, 16 U.C.R. 589.

In *Re* The Cosmopolitan Life Association, 15 P.R. 185, an order had been made by a county court for the winding up of a company. On appeal the court held that there was no jurisdiction to make the winding up order and that all proceedings were irregular or null, being *coram non judice*, and that there was no jurisdiction to order the payment of costs

as the above section and rule do not apply to proceedings under the Winding-up Act.

In Teskey v. Neil, 15 P.R. 244, an order had been made by the master in chambers by consent, directing the trial of an interpleader issue in the county court. It was held on appeal that there was no jurisdiction to make an order, and, therefore, no right to appeal from the judgment of the county court upon the issue. The appeal was, therefore, quashed with costs.

In Empire Oil Co. v. Vallerand, 17 P.R. 27, judgment was given in the county court in an action on a contract made in Quebec, the writ having been served on the defendant in that province. It was held on appeal that there was no jurisdiction to make the order for service of the writ. The appeal was allowed with costs.

In Sl v. Evans, 22 A.R. 242, an appeal from the county court was allowed with costs on the ground of want of jurisdiction in the county court by reason of the amount claimed being too great. No order was made, however, as to the costs in the court below, as the appeal was allowed on the want of jurisdiction, and the above rule seemed to leave the matter in the discretion of the county court judge.

ENFORCING JUDGMENTS AND ORDERS.

34. Every county and district court shall have the like power as is possessed by the high court of enforcing its judgments and orders in any part of Ontario, and may issue the like writs and process as may be issued out of the high court; and the same shall have the like force and effect as writs and process issued out of the high court. *See* R.S.O. 1897, c. 55, ss. 43 and 44.

Con. Rules 835 to 921 inclusive, provide for the various

means by which judgments and orders of the high court may be enforced.

In Rustin v. Bradley, 28 O.R. 119, the action was brought in the county court of York for a legacy of $5 charged on land in the County of Peel, in which latter county the probate of the will had been granted. It was held that the county court of York had power to order a sale of the land.

PUNISHMENT FOR CONTEMPT OF COURT.

35. Every county and district court may punish by fine or imprisonment, or by both, for any wilful contempt of or resistance to its process, rules or orders; but the fine shall not in any case exceed $100, nor shall the imprisonment exceed six months. R.S.O. 1897, c. 55, s. 45.

In the second edition of Oswald on Contempt, at page 49. it is stated that "Most direct contempts are punishable, summarily and instanter, by fine or commitment at the discretion of the judge. In the case of an advocate, the further penalty of partial suspension from his privilege of practising as such may be inflicted, though an absolute suspension by disbarring or striking off the rolls would seem an excessive and improper penalty to impose (Smith v. Justice of Sierra Leone, 3 Moore P.C. Ca. 362). An advocate may be ordered to resume his seat, or even to be removed from the court, if he behaves irregularly. In the case of such commitments as those now referred to, no warrant is necessary (Carus Wilson's Case, 7 Q.B. 984); nor need the cause of commitment be set out at length in any warrant (*Ex parte* Fernandez, 10 C.B.N.S. 3). . . . If a direct contempt is not punished on the spot, the proper course is to proceed upon notice for committal or attachment. Contempts committed before officers of the court are punishable in the same manner by the court to which the officer is attached."

In Callow v. Young, 56 L.T. 147, Chitty, J., points out the former distinction between committal and attachment as follows: "Committal was the proper remedy for doing a prohibited act, and attachment was the proper remedy for neglecting some act ordered to be done." He quotes Sir George Jessel as saying that "for most practical purposes the former distinction has been abolished, but there may be cases where it would still be maintained." See forms of order for committal and warrant, Nos. 11 and 12.

In *Re* Pacquette, 11 P.R. 463, it was held that a judge of a county court, who was acting under the Assignment Act was not exercising the powers of the county court, but an independent statutory jurisdiction as *persona designata*, and had, therefore, no power to direct the issue of a writ of attachment.

Subsequently the following statute was passed, which now forms section 2 of 9 Edw. VII. c. 46:—

"2. Where jurisdiction is given to a judge as *persona designata*, and no other mode of exercising it is prescribed, he shall have jurisdiction as a judge of the court to which he belongs, and the same jurisdiction for enforcing his orders, as to proceedings generally, as to costs and otherwise as in matters under his ordinary jurisdiction as a judge of such court."

In *Re* Clark and Heermans, 7 U.C.R. 223, it was held that where a power resides in any court or judge to commit for contempt, it is the power or privilege of such court or judge to determine on the facts, and it does not belong to any higher tribunal to examine into the truth of the case.

In *Re* Lees v. The Judge of the County Court of Carleton, 24 U.C.C.P. 214, it was held that every court of record has the power to punish for contempt, but if the court is one of inferior jurisdiction, the superior court may intervene and prevent any usurpation of jurisdiction by it. It was held in this case, however, that there was no excess of jurisdiction,

and that the court could not interfere. See also *Ex parte* Pater, 5 B. & S. 299.

In Young v. Saylor, 23 O.R. 513, which was an action against a justice of the peace, it was held that if the defendant had issued his warrant for the commitment of the plaintiff, and had therein stated sufficient grounds for his commitment, the court could not have reviewed the facts alleged by him in his commitment. On appeal this judgment was affirmed by the court of appeal, 20 A.R. 645.

In *Re* Anderson v. Vanstone, 16 P.R. 243, it was held that an order made by the judge of a county court in chambers for the commitment of a party to an action in that court for default of attendance as a judgment debtor, is "process" in an action within the meaning of the exception in section 1 of the Habeas Corpus Act, and where such a party was committed under such an order, a writ of habeas corpus was quashed as having been improvidently issued.

In Regina v. Lefroy, L.R. 8 Q.B. 134, it was held, under the corresponding section of the English County Courts Act, that the judge had no power to proceed under this section, or by virtue of his authority as a judge, against a person for contemptuous and insulting writing published out of court.

In Regina v. Judge of Brampton County Court (1883), 2 Q.B. 195, it was held that a judge could not commit a person for contempt for practising as a solicitor without being duly qualified.

In Levy v. Moylan, 19 L.J.C.P. 308, it was held that a warrant was not bad for uncertainty in specifying the cause of commitment, nor for omitting to describe the nature of the insults, and that the recital that the plaintiff had insulted the judge was a sufficient adjudication of the offence.

In Regina v. Jordan, 57 L.J.Q.B. 483, it was held that the judge had jurisdiction to decide conclusively whether any particular act amounted to an insult, interruption or

misbehaviour, if there was any evidence on which he could reasonably hold it to be so; and it was not necessary that the commitment should state more than that the judge had been wilfully insulted. It was further held that to say to a judge in reference to an observation in his judgment: "That is a most unjust remark," was a wilful insult within the section. It was also held that the warrant, issued at the rising of the court, was regular, although the judge had made the order orally, and it was en' ed in the registrar's book. See also Martin v. Bannister, 4 Q.B.D. 491; Richards v. Cullerne, 7 Q.B.D. 623; Hutchinson v. Hartmont, W.N. (1877), 29; Harvey v. Hall, L.R. 11 Eq. 31; Hyman v. Ogden, 74 L.J.K.B. 101.

ACCOUNTS AND INQUIRIES.

33.—(1) Where it is proper to direct a reference the same may be made to any officer to whom a reference may be directed by the high court or to the clerk of the court.

(2) Where the judge of the court is local master the reference may be made to himself but no fees shall be charged by him on such reference. R.S.O. 1897, c. 55, s. 46.

(3) Upon every such reference the fees to be paid and the costs to be allowed, whether as between party and party, or solicitor and client, shall be according to the county court tariff. R.S.O. 1897, c. 55, s. 47.

For form of order, see form No. 13.
Con. Rule 141 is as follows:—

141. (1) Subject as aforesaid, the judges of the county courts, the master in ordinary, the master in chambers, the

clerk of the Crown and pleas, the registrars of the high court and the local masters shall be official referees for the trial of such questions as shall be directed to be tried by such referees.

It was held in McClure v. Township of Brooke, 5 O.L.R. 59, that a drainage referee is not an official referee, and he cannot act as such unless he is appointed by the parties as a special referee.

Rules 654 to 756 contain the provisions as to such references.

37.—(1) In an action in a county or district court the judge shall have the same powers with regard to the making of an order of reference as may be exercised by a judge of the high court in an action therein. R.S.O. 1897, c. 62, s. 37; 9 Edw. VII. c. 27, s. 3 (121*f*).

The following sub-section, which was added to the Judicature Act by 9 Edw. VII. c. 27, s. 3, provides for such references:—

121*a*. Subject to rules of court and to any right to have particular cases tried by a jury, the court or a judge may refer any question arising in an action for inquiry and report to an official referee or to a special referee agreed upon by the parties. R.S.O. 1897, c. 62, s. 28.

121*b*. In an action,

(*a*) If all the parties interested who are not under disability consent; or,

(*b*) Where a prolonged examination of documents or a scientific or local investigation is required which cannot in the opinion of the court or a judge conveniently be made before a jury or conducted by the court or judge directly; or,

(*c*) Where the question in dispute consists wholly or partly of matters of account,

the court or a judge may at any time refer the whole action or any question of issue of fact arising therein or question of account either to an official referee or to a special referee agreed upon by the parties. R.S.O. 1897, c. 62, s. 29.

Rules 645 and 646 are as follows:—

645. In default of appearance to a writ indorsed under Rule 140, and after appearance (in a case in which the preceding rules do not entitle the plaintiff to a judgment or order otherwise) the plaintiff may apply for, and unless the defendant, by affidavit or otherwise, satisfies the court or a judge that there is some preliminary question to be tried, shall be entitled to a judgment or order for the taking of the account claimed, by a reference to any officer to whom the reference might be ordered at a trial, with all directions formerly used in the court of chancery in similar cases. Con. Rule 745.

646. The court or a judge 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. Con. Rule 551.

(2) An appeal in like manner and within the same time as in like cases in actions in the high court shall lie from the report on the reference to the judge of the county or district court in chambers, who shall upon such appeal have the same power as may be exercised by a judge in like cases in the high court. R.S.O. 1897, c. 62, s. 38; 9 Edw. VII. c. 27, s. 3 (121*f*).

The following rules apply to such appeals:—

769. Every report or certificate of a master shall be filed and shall become absolute at the expiration of fourteen days from the date of serving of notice of filing the same unless notice of appeal is served within that time. Con. Rule 848, amended.

771. (1) A notice of appeal from the report or certificate of a master to which Rule 770 does not apply, or of an official referee, shall be a seven clear days' notice, setting out the grounds of appeal, and shall be returnable within one month from the date of service of notice of filing of the report or certificate, unless otherwise ordered.

(2) The appeal shall be set down for argument before a judge in court at latest the day before the day on which the motion is returnable. Con. Rules 849, 850, amended. See Rules of 1 Jan., 1896, 1492; see 59 V. c. 18, s. 3.

In *Re* Crossman v. Williams, 4 O.W.R. 14, it was held that the words, "a judge in chambers," contained in the former section 49, corresponding to the above sub-section, meant a judge of the county court in chambers, not a judge of the high court.

(3) An appeal shall lie from any order, judgment or decision of the judge of a county or district court and from the report upon a reference made under sub-section 2 of section 36 to a divisional court of the high court, and the proceedings and practice on the appeal as to staying proceedings and otherwise shall be similar to the proceedings and practice relating to an appeal from a judgment under the provisions of section 39. R.S.O. 1897, c. 62, s. 39; 9 Edw. VII. c. 27, s. 3 (121*f*).

Con. Rule 777 is as follows:—

772. An appeal shall lie to a divisional court (or to the court of appeal) from the judgment or order of a judge in court upon an appeal from the certificate or report of a master or official referee in the same manner and subject to the same restrictions as in the case of other judgments or orders of a judge in court. *New.*

(4) Nothing in this section shall empower the judge of a county or district court to refer any proceeding to which His Majesty is a party, or any question or issue in any such proceeding, to an official referee, without the consent of His Majesty. R.S.O. 1897, c. 62, s. 46, *part;* 9 Edw. VII. c. 27, s. 3 (121*g*).

(5) Consolidated Rules 648 to 653 or any rules substituted for them shall apply to references under this section. 9 Edw. VII. c. 27, s. 3 (121*h*).

The following are the rules referred to:—

648. (1) Where a reference is made to a referee under the Arbitration Act, he shall have all the powers of a master, and shall, in addition, unless otherwise ordered, have in the conduct of the reference all the powers of a judge of the high court when presiding at a trial, except the powers of directing judgment to be entered and committing any person to prison, or enforcing an order by attachment or otherwise. Con. Rules 37, 38, 552.

(2) Neither the plaintiff nor the defendant shall bring or prosecute any action against the referee, or against each other, of or concerning the matters referred to the referee. Con. Rule 552(*b*).

(3) In the event of the referee declining to act, or dying before he has made his report, the parties, or if they cannot

agree, the judge of the high court may, upon application of either party, appoint a new referee. Con. Rule 552(*c*).

(4) The referee shall make his report concerning the matters referred to him; and if either party by affected delay or otherwise wilfully prevents the referee from making his report, he shall pay such costs to the other party as to the court or a judge may seem just. Con. Rule 55 (1) and (*b*).

(5) An order of reference to a referee made under the Arbitration Act, or Rule 646, shall be read as if it contained the provisions of this rule, but may contain any variation therefrom or addition thereto. Rules 23 June, 1894, 1343.

649. The referee may, subject to the order of the court or a judge, proceed with the reference at, or adjourn it to, any place which he may deem convenient, and have any inspection or view which he may deem expedient for the better disposal of the matters referred to him. Con. Rule 34.

650. The practice and procedure on the reference to a referee, including the procuring of the attendance of witnesses, shall be the same, as nearly as may be, as the practice and procedure in the master's office. Con. Rule 35.

651. The referee may, by his report or by interim certificate, submit any question arising in the reference for the decision of the court; and upon any motion in respect to the report or such certificate the court may adjudicate in respect to the question so submitted. See Con. Rule 39.

652. The court may require explanations or reasons from the referee, and remit the cause or matter, or any part thereof for further consideration, to the same or any other referee, or upon an appeal from the referee's report or certificate the court may decide the question referred to the referee on the evidence taken before him, either with or without additional evidence as the court may direct. Con. Rule 40.

653. The report of a referee may be filed by any party forthwith after the same has been made, in the same manner as the report of a master, and, upon notice of the filing having been given, shall from the time of service of such notice have the effect of, and be subject to all the incidents of a report of a master as regards confirmation, appealing therefrom, motions thereupon, and otherwise. Rules 23 June, 1894, 1288. See 60 V. c. 16, s. 31.

APPEALS.

38. The terms "party to a cause or matter," and "appellant," hereinafter used, shall include a person suing or being sued in the name of another, and a person on whose behalf or for whose benefit an action is prosecuted or defended. R.S.O. 1897, c. 55, s. 50.

Sub-section 8 of section 1 of the Judicature Act is as follows:—

"Party" shall include every person served with notice of attending any proceeding, although not named on the record.

In Henderson v. Rogers, 15 P.R. 241, it was held that a claimant in a garnishee issue, though not a party to the original action, is a "party" within the meaning of section 40. Sato v. Hubbard, 6 A.R. 546, distinguished.

39.—(1) Any party to a cause or matter may appeal to a divisional court of the high court from any judgment directed to be entered at or after the trial.

(2) A motion for a new trial shall be deemed an appeal and shall be made to a divisional court. R.S.O. 1897, c. 55, s. 51; 9 Edw. VII. c. 28, s. 21.

This simple provision as to appeals, has been substituted for the former complicated section 51, which was productive of so much unnecessary litigation, and which was as follows:

51. (1) Any party to a cause or matter in a county court may appeal to a divisional court of the high court of justice from any judgment directed by a judge of the county court to be entered at or after the trial in any case tried without a jury, and also in any case tried with a jury, to which subsection 4 does not apply.

(2) Instead of appealing to a divisional court of the high court of justice any party may move before the county court within the first two days of its next quarterly sittings to set aside the judgment and enter any other judgment upon any ground.

(3) A motion for a new trial on the ground of discovery of new evidence or the like, shall be made before the county court.

(4) Where there has been a trial with a jury any motion for a new trial, whether made for that relief alone or combined with, or as an alternative for any other relief, shall be made to the county court.

(5) If a party moves before a county court under subsection 2 in a case in which he might have appealed to the high court he shall not be entitled to appeal from the judgment of the county court to the high court, but the opposite party shall be entitled to appeal therefrom to the high court. 58 V. c. 13, s. 44(1); 60 V. c. 15, Sched. A.(69).

In consequence of this amendment, all the numerous cases decided under the old section, as to the proper court to which an appeal should be made in each particular case, and which were the occasion of so much refinement of reasoning, have been rendered obsolete.

40.—(1) An appeal shall also lie to a divisional court at the instance of any party to a cause or matter from

(*a*) Every decision of a judge under any of the powers conferred upon him by any of the Rules of Court or by any statute, unless provision is therein made to the contrary;

(*b*) Every decision or order made by a judge in chambers under the provisions of the law relating to interpleader proceedings, the examination of debtors, attachment of debts and proceedings against garnishees;

(*c*) Every decision or order in any cause or matter disposing of any right or claim, if the decision or order is in its nature final and not merely interlocutory: and from

(*d*) Any decision or order of a judge whether pronounced or made at the trial or on appeal from taxation or otherwise, which has the effect of depriving the plaintiff of county court costs on the ground that his action is of the proper competence of the division court or of entitling him to county court costs on the ground that the action is not of the proper competence of the division court. 4 Edw. VII. c. 10, s. 13.

In the former Act, the first three clauses of the above sub-section 1 formed one undivided section, as follows:—

52. (1) An appeal shall also lie to a divisional court of the high court of justice, at the instance of any party to a cause or matter from every decision made by a judge of a county court under any of the powers conferred upon him by any rules of court or any statute, unless provision is therein made to the contrary; and from every decision or order made by a judge of a county court sitting in chambers under the provisions of the law relating to interpleader proceedings, the examination of debtors, attachment of debts and proceedings against garnishees; and from every decision or order made in any cause or matter disposing of any right or claim, provided always that the decision or order is in its nature final and not merely interlocutory. R.S.O. 1887, c. 47, s. 42; 58 V. c. 13, s. 44(2); 59 V. c. 18, Sched. (48); c. 19, s. 14.

The proviso in clause (*c*) as to the necessity for the decision or order being "in its nature final and not merely interlocutory," to render it appealable, has been held equally applicable to all the matters now contained in these three clauses; see cases cited below, particularly judgment of Boyd, C., in *Re* Taggart v. Bennett, 6 O.L.R., at page 77. It may be, however, that the altered construction of the present section now renders this proviso inapplicable to decisions under clauses (*a*) and (*b*), though it is presumed that it was not intended, in making the present sub-division, to cause any change in this respect. See Hardcastle (4 ed.), pp. 197 *et seq.*; Maxwell (4 ed.), pp. 1, 38, 89 and 488, and Canada Southern Ry. Co. v. Clouse, 13 S.C.R. 139.

Clause (*c*) of this sub-section (like the former sub-section 2 of section 23, and the former section 51 of the old Act, both now repealed), has been the the occasion of a great many decisions containing fine-drawn distinctions—in this case, as to the meaning of the words "final" and "interlocutory." As regards the use of the latter word in this

connection, see the judgment of Anglin, J., in Smith v. Traders Bank, 11 O.L.R., at page 27, where he preferred the word "intermediate." In Salaman v. Warner (1891), 1 Q.B. 734, following Standard Discount Co. v. LaGrange, 3 C.P.D., at page 71, a "final order" is defined as one made on such an application or proceeding that, for whichever side the decision is given, it will if it stands, finally determine the matter in litigation. In Bozson v. Altrincham Urban Council, 72 L.J.K.B. 271, the court of appeal followed the earlier inconsistent decision on Shubrook v. Tufnel, 9 Q.B.D. 621, in preference to Salaman v. Warner, and laid down the following test, viz.: if the order finally disposes of the rights of the parties, it ought to be treated as final; if, on the other hand, further proceedings are necessitated, it ought to be treated as interlocutory. See also *Re* Alexander, 61 L.J.Q.B. 377; *Re* Binstead, 62 L.J.Q.B. 207; *Re* Vulcan, 67 L.J.P.D. 101; *Re* Herbert Reeves & Co., 71 L.J. Ch. 70; Bank of Toronto v. Keilty, 17 P.R. 250; Rural Municipality of Morris v. L. & C. L. & A. Co., 19 S.C.R. 434; Maritime Bank v. Stewart, 20 S.C.R. 105; Baptist v. Baptist, 21 S.C.R. 425, and The Queen v. Clark, *Ib.* 656.

In the following cases in which the point has been specifically raised, the orders have been held to be final, and therefore appealable, under this clause:—

An order for leave to enter judgment under Rule 603: Bank of Minnesota v. Page, 14 A.R. 347; even where the order is made conditionally only on security not being given: Castle v. Kouri, 18 O.L.R. 462. See also Nelson v. Thorner, 11 A.R. 616, and Collins v. Hickok, *Ib.* 620.

An order committing the defendant to jail upon his examination as a judgment debtor for selling or making away with his property in order to defeat or defraud his creditors. Baby v. Ross, 14 P.R. 440. See also *Re* Anderson v. Vanstone, 16 P.R. 243.

An order under the Ontario Winding Up Act approving of the sale of the assets of a company. *Re* The D. A. Jones Co., 19 A.R. 63.

An order disposing of an issue directed by an order made upon a garnishee application. Henderson v. Rogers, 15 P.R. 241.

An order dismissing a petition to vacate and set aside a partition of land. Jenking v. Jenking, 11 A.R. 92.

An order dismissing a motion to set aside judgment entered as for default of defence. Voight Brewery Co. v. Orth, 5 O.L.R. 443; O'Donnell v. Guinane, 28 O.R. 389, *infra*, distinguished.

An order directing judgment upon a specially endorsed writ, for delivery of possession of land and for the trial of an issue to ascertain defendant's interest in the land. Vivian v. Taylor, Divisional Court, March 4th, 1901 (unreported.)

An order allowing the defendant to set off his costs in exeess of such costs as he would have incurred in a division court against the eosts of the plaintiff, and to enter judgment and issue execution for the excess, if any. Babeock v. Standish, 19 P.R. 195. See also Kreutziger v. Brox, 32 O.R. 418. See, however, Leonard v. Burrows, 7 A.R. 316, and see now seetion 41, *infra*.

An order purporting to be made under Con. Rule 261, striking out certain paragraphs of a statement of defence as disclosing no reasonable answer, even though such order is, in form "intermediate." Smith v. Traders Bank, 11 O.L.R. 24.

In the following cases appeals have also been entertained, but the question of the right to appeal was not raised:—

From a judgment in a partition matter under R.S.O., c. 123. Furness v. Mitchell, 3 A.R. 510.

An order in interpleader proceedings. Fee v. Bank of

Toronto, 10 U.C.C.P. 32. See also Whiting v. Hovey, 12 A.R. 119.

A judgment on a special case. Shaver v. Hart, 31 U.C.R. 603. See also Osler v. Muter, 19 A.R. 94.

An order imposing terms on a defendant as a condition of giving him leave to defend. McVicar v. McLaughlin, 16 P.R. 450.

An order under the Creditors Relief Act setting aside a judgment and execution. Molsons Bank v. McMeekin, 15 A.R. 535. See also Bowerman v. McPhillips, 15 A.R. 679.

An order allowing execution to issue on a judgment. Mason v. Johnston, 20 A.R. 412.

An order refusing to allow execution to issue on a judgment. McMahon v. Spencer, 13 A.R. 430.

An order for the examination of the wife of a judgment debtor as a person to whom the latter had made a transfer of his property. Goodeve v. White, 15 P.R. 433.

In the following cases, in which the right to appeal has been questioned, the orders have been held to be interlocutory, and therefore not appealable under this section:—

An order dismissing an application by the plaintiff for summary judgment under Rule 603. Fisken v. Stewart, 17 C.L.T. 82.

An order enlarging *sine die* until after the happening of a named event, a motion by the defendant to dismiss the action for want of prosecution. Slater v. Mader, 17 C.L.T. 83.

An order upon an interpleader application, imposing upon the appellants terms as to payment of costs in relieving them from an order barring their claim. Elley v. Evans, Divisional Court, Oct. 11, 1897 (unreported).

An order setting aside a judgment by default as irregular upon terms of the defendant paying costs. O'Donnell v. Guinane, 28 O.R. 389. (This objection does not seem to

have been raised in McVicar v. McLaughlin, 16 P.R. 450, *supra*.)

An order dismissing, except upon terms as to payment of costs, security, etc., a motion by defendant to set aside as irregular, a judgment in favour of plaintiff entered under an order whereby the defence was struck out for irregularity. Nesbitt v. Malone, Divisional Court, Jan. 10, 1898 (unreported.)

An order upon an interpleader application made by the sheriff, directing security to be given for the goods and for costs and the trial of an issue in the event of security being given, and in default for the sale of the goods, and the payment of the proceeds to the execution creditor. Hunter v. Hunter, 18 C.L.T. 114.

An order striking out a jury notice. McPherson v. Wilson, 13 P.R. 339.

An order upon the application of the defendants after judgment dismissing the action, requiring the plaintiffs to give security for costs, staying proceedings in the meantime, and directing that in default of security being given within the time limited, the action to be dismissed with costs. Arnold v. Van Tuyl, 30 O.R. 663.

An order made after judgment, directing the judgment debtors to attend for examination before a special examiner, and ordering their alleged transferee to attend and produce the books of account used by the debtors in their business. *Re* Gault v. Carpenter, 1 O.W.R. 404.

An order discharging an application to vary the minutes of judgment. *Re* Taggart and Bennett, 6 O.L.R. 74.

An order dismissing an appeal from a ruling as to the scale of costs upon taxation of the plaintiff's costs of the action awarded by the judgment. Babcock v. Standish, 19 P.R. 195, *supra*, distinguished. Leonard v. Burrows, 7 O.L.R. 316. See also McCormick Harvester Co., 3 O.L.R. 427. (See now, however, clause (*d*).)

An order dismissing an application to commit a defendant for contempt for refusing to be sworn on an examination. New Hamburg Mfg. Co. v. Barden, 21 C.L.T. 377.

An order discharging a defendant from arrest under a *ca. sa.* Gallagher v. Gallagher, 31 O.R. 172.

Prior to the passing of clause (*d*), it was held in Leonard v. Burrows, 7 O.L.R. 316, distinguishing Babcock v. Standish, 19 P.R. 195, and Kreutziger v. Brox, 32 O.R. 418, that there was no appeal in cases of the kind referred to, as to the proper scale of costs applicable. See notes to section 11, *supra*.

In addition to the above, sub-section 3 of section 37, *supra*, provides for appeals from judgments on references, and Con. Rule 1219 provides for appeals in applications to change the place of trial. See notes to section 30, *supra*, and section 74 of the Judicature Act, as amended by section 7(4) of the Statute Law Amendment Act, 1910, as to appeals to the divisional court from county and district court judges in other cases.

(2) This section shall not apply where jurisdiction is given to the judge as *persona designata*. R.S.O. 1897, c. 55, s. 52.

By 9 Edw. VII. c. 46, the following provisions are made for the exercise of powers given to a judge as *persona designata*, and for appeals from his decisions:—

2. Where jurisdiction is given to a judge as *persona designata*, and no other mode of exercising it is prescribed, he shall have jurisdiction as a judge of the court to which he belongs, and the same jurisdiction for enforcing his orders, as to proceeding generally, as to costs and otherwise, as in matters under his ordinary jurisdiction as a judge of such court. R.S.O. 1897, c. 76, s. 1.

3. (1) Where made by a judge of the high court the order may be filed in the central office of the high court of justice, or with a local registrar, deputy registrar or deputy clerk of the Crown, and, where made by a judge of a county or district court the order may be filed with the clerk of the court.

(2) Upon an order being so filed it shall become an order of the high court or of the county or district court as the case may be, and may be enforced in the same manner and by the like process as if the order had been made by such court. R.S.O. 1897, c. 76, s. 2.

(3) The like fees shall be payable as are payable upon the issue of an order made by the judge in the exercise of his ordinary jurisdiction. R.S.O. 1897, c. 76, s. 3.

(4) The order shall be entered in the same manner as a judgment of the court in which the order is so filed. R.S.O., c. 76, s. 4.

4. There shall be no appeal from such order unless an appeal is expressly authorized by the statute giving the jurisdiction or unless special leave is granted by the judge making the order or by a judge of the high court, in which case the appeal shall be to a divisional court of the high court whose decision shall be final. R.S.O. 1897, c. 76, s. 6; 63 V. c. 17, s. 14.

In Coyne v. Lee, 14 A.R. 503, an order had been made in a high court action for an interpleader issue to be tried by the county court of Middlesex. By a subsequent order made on consent, the trial of such issue was withdrawn from Middlesex, and a special case was agreed on, and the venue changed from Middlesex to York, where the special case was argued. On appeal from the decision of the latter court to the court of appeal it was held that the proceedings in the county court of York could be regarded only as a summary trial by consent, from which no appeal lay.

In *Re* Pacquette, 11 P.R. 463, a judge of a county court removed an assignee for creditors and substituted another. The first assignee refused to deliver over the keys, and the judge made an order for the issue of a writ of attachment for contempt. It was held that the judge in acting under the Assignment Act was not exercising the powers of the county court, but an independent statutory jurisdiction as *persona designata*, and had, therefore, no power to direct the issue of the writ of attachment, and prohibition was ordered. This was followed in *Re* Young, 14 P.R. 303, where it was held that the county court judge had no power to order payment of costs as the proceedings were not in any court and Rule 1170(*a*) did not apply to them.

In *Re* Simpson and Clafferty, 18 P.R. 402, the county court judge made an order dismissing an application by a claimant to vary the scheme of distribution made by the assignee of an insolvent, and it was held that it was made by him as *persona designata*, and there was no appeal therefrom.

In *Re* Waldie and the Village of Burlington, 13 A.R. 104, an order was made by the judge of the county court of the county in which certain lands were situate altering and amending the plan thereof, notwithstanding this the council passed a by-law declaring open some streets closed by the order, and the plaintiff thereupon took proceedings to quash the by-law, which application was granted. While it was not necessary to decide the point it was suggested that an appeal would have lain from the decision of the judge under the Registry Act.

In Hutson v. Valliers, 19 A.R. 154, it was held that where the parties in a mechanics' lien proceeding had consented to the matter being disposed of by the judge of the county court who had no jurisdiction otherwise than under the consent, neither party could appeal from his judgment.

In Charron v. Barrie, Divisional Court, March 1st, 1898

(unreported), the county court judge dismissed an action for an injunction and declaration of a lien on certain logs. On appeal it was held that as the sum claimed exceeded $200, the county court had no jurisdiction, but the parties having consented to the judge trying the action, he was in the position of a quasi-arbitrator from whose decision no appeal lay, and the appeal was therefore quashed without costs.

In *Re* Moore and Township of March, 20 O.L.R. 67, an appeal was taken to the divisional court from the audit and judgment of the county court judge of Carleton, under 3 Edw. VII. c. 22, s. 4, whereby he disallowed a portion of the charges made by Moore against the township. The Act provides that the account of an engineer employed under the Municipal Drainage Act shall, upon the request of the municipal council, be audited by the county judge. Special leave to appeal was given by the judge, but the majority of the divisional court held that an appeal did not lie.

See further, as to jurisdiction being given to a judge as *persona designata*. *Re* Allen, 31 U.C.R. 458; *Re* Waldie and Burlington, 13 A.R. 104; C. P. Ry. Co. v. Little Seminary of Ste. Therese, 16 S.C.R. 606; *Re* T. H. & B. Ry. Co. v. Hendrie, 17 P.R. 199; St. Hilaire v. Lambert, 42 S.C.R. 264; Godson v. City of Toronto, 16 A.R. 452, 18 S.C.R. 36; *Re* Alexander Boyes, 13 O.R. 3; McLeod v. Noble, 28 A.R. 528, 24 A.R. 459.

41. An appeal may be had, notwithstanding that judgment has been signed. R.S.O. 1897, c. 55, s. 53.

Prior to the enactment of this section by 45 V. c. 6, there could be no appeal after judgment was entered. Murphy v. Northern Ry. Co., 13 U.C.C.P. 32; Duffil v. Dickinson, 14 U.C.C.P. 142; Wood v. G. T. Ry. Co., 16 U.C.C.P. 275.

42.—(1) The judge shall, at the request of the appellant, certify under his hand to the proper officer of the high court the pleadings in the cause and all motions or orders made, granted or refused therein, and his judgment or decision, and, where a trial has been had, his charge to the jury, if any, the evidence and all objections and exceptions thereto, or to his charge, and all other papers in the cause affecting the question raised by the appeal. R.S.O. 1897, c. 55, s. 55.

Con. Rule 793 is as follows:—

793. (1) In appeals from county courts, the pleadings, motions, orders and other papers to be certified to the proper officer of the high court under section 51 (r) of the Act respecting county courts, shall include:—

(*a*) The original pleadings;

(*b*) Notices of motion, and orders affecting questions raised by appeal;

(*c*) The judgment or orders appealed from and the written opinion or decision of the judge;

also where a trial has been had

(*d*) The judge's notes, or where the evidence has been taken by a stenographer, his notes, of the evidence and of any objections and exceptions thereto, and of the rejection of any evidence, and of the judge's charge;

(*e*) The exhibits put in at the trial.

(2) The said papers shall be fastened together and transmitted to the central office and the same shall be returned to the county court when the appeal is disposed of.

(3) It shall not be necessary to certify or transmit the evidence or the objections or exceptions thereto, where the appeal is from a judgment or decision upon the pleadings, or

upon a motion not founded upon the evidence. See Rules 1 Jan., 1896, 1489 (835).

For form of certificate see form No. 14.

Con. Rule 792 requires that, where the evidence is taken down by a stenographer, three certified copies shall be supplied for the use of the judges in the divisional court. These copies of course include the copy certified by the county judge as above provided.

In Lees v. O. & N. Y. Ry. Co., 31 O.R. 567, an objection was taken that the original pleadings were not certified, but only copies of them, but it was held that, as it was only Rule 793 and not the above section that required the original pleadings to be certified, the court might dispense with what the rules required to be done, or permit it to be done *nunc pro tunc*.

In Baby v. Ross, 14 P.R. 440, it was held that it was not a valid objection to an appeal, that the judge of the county court had not, in certifying the proceedings, expressed in his certificate that they were certified to the court of appeal, to which an appeal lay.

In Gilmour v. McPhail, 14 C.L.T. 277, it was held that until the proceedings in the court below had been sent up to the court of appeal (to which an appeal then lay) by the county court judge as directed by the above section, the appeal was not lodged, and the court could neither dismiss it nor extend the time for setting it down for hearing.

In Smith v. Hay, Divisional Court, 7th June, 1899 (unreported), an application was made to quash the appeal on the ground that the case was improperly set down, the proceedings not having been certified by the judge as required by this section. The appellant asked to be allowed to have the proceedings certified *nunc pro tunc*, and the setting down taken as properly done. The court held that the appeal could not be considered as set down because the proceed-

ings were not certified, and as the section required that it should be done within a certain time, and gave no power to extend the time, it would be useless to allow the proceedings to be certified then, as the appeal would have to be set down again and it would then be too late.

In Reekie v. McNeil, 31 O.R. 444, it was held that the provisions of this section are peremptory, and that there was no power to dispense with such provisions or to enlarge the time for setting down the appeal. A judge of a district court having refused to certify the pleadings so as to allow an appeal to be set down for the divisional court, an order was obtained from a judge to allow such an appeal to be set down, but it was held that the order was of no avail and the appeal was struck out.

In Taggart v. Bennett, 2 O.L.R. 184, the above case was distinguished. The judgment appealed from having been given on 9th December, 1902, the appeal should have been set down for the sittings of the divisional court, beginning 12th January, 1903, such sittings not being merely a postponed sittings, and the appeal having been set down for a latter sittings was out of time, but it was held that the court had power under Rule 353 to enlarge the time, and as the appellant was misled by the change of date, the case was one for the granting of the indulgence.

In a subsequent application in the latter case, reported in 6 O.L.R. 74, it was held that the fact that there may be no right of appeal is no reason why the county judge should not certify the papers. Whether there is an appeal or not is for the court appealed to. The judge's duty is ministerial and the certificate should be given upon request.

In Lucas v. Holliday, 8 O.L.R. 541, the court appears to have entertained the appeal, notwithstanding the omission to have the proceedings certified, no objection having been taken thereto. See judgment of Meredith, J., page 543.

The judge can be compelled by mandamus to certify the

papers where he has been applied to and has refused to do so. *Re* Keenahan v. Preston, 21 U.C.R. 461: but not after the time to appeal has expired. Orr v. Barrett, 9 C.L.T. 72.

(2) The judge shall be required to certify only the pleadings, motions, orders, affidavits, evidence and other material, necessary for the full understanding of the matter in appeal, together with his judgment or decision. R.S.O. 1897, c. 55, s. 56.

The former section, from which this sub-section is taken, applied only to appeals from "final orders" and orders as to costs under section 40, but this sub-section is made applicable to all appeals.

43. Subject to the next following section, any judge of the county or district court appealed from may, upon application to him, stay proceedings in the action to enable the appeal to be brought, upon such terms and for such time as he may deem just. Con. Rule 794.

The above is one of the instances of the embodying of the provisions of the Con. Rules in the Act. It would have made matters simpler if all the provisions of the rules peculiarly applicable to the county courts had been transferred to the Act.

For form of order under this section, see form No. 15.

See Con. Rules 797, *infra*, as to stay of execution pending an appeal.

44.—(1) The appeal shall be set down for argument at the first sittings of a divisional court which commences after the expiration of thirty days from

the judgment, order or decision complained of. R.S.O. 1897, c. 55, s. 57.

The original section 57 contained the following in addition to the above:—

"And the divisional court shall give such order or direction to the court below, touching the judgment to be given in the matter, as the law requires; and shall also award costs to either party in its discretion, which costs shall be certified to and form part of the judgment of the court below; and upon receipt of the order, direction and certificate, the court below shall proceed in accordance therewith."

The following Con. Rules supplement the provisions of the Act as to county court appeals:—

1218. A motion against a judgment or for a new trial shall be upon two clear days' notice, and the motion shall be set down one clear day before the first day of the sittings for which the notice is given unless otherwise ordered. Con. Rule 1259.

789. Every notice of motion or appeal to a divisional court shall set out the grounds of the motion or appeal. Con. Rule 790. Rules of 1 Jan., 1896, 1484 (7990); Rules of 9 Jan., 1897, amended.

790. (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. Con. Rule 801. Rules of 1 Jan., 1896, 1485.

(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. *New.*

(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 obtain on præcipe an order for payment of the same, on filing the certificate of taxation and an affidavit of non-payment of the costs. *New.*

See *Re* Toronto Ry. Co. v. City of Toronto, 18 P.R. 489.

795. The appeal shall be set down to be heard at latest 2 clear days before the first sittings of a divisional court, which commences after the expiration of 30 days from the decision complained of, and, where the motion or appeal is founded upon the evidence, at or before the time of setting down, the appellant shall deliver to the proper officer 2 copies of the evidence certified as correct for the use of the judges. Rules of 1 Jan., 1896, 1489 (837), amended.

This rule is, in part, a repetition of the above section.

796. The appellant shall, at least 7 days before the sittings at which the appeal is to be heard, serve the respondent with notice of hearing and the reasons of appeal. Rules of Jan. 1, 1896, 1489 (845), amended.

797. Where notice of hearing of the appeal has been given and the appeal has been set down to be heard, and notice thereof signed by one of the registrars of the high court has been given to the sheriff where execution is in his hands, the execution of the judgment or order appealed from shall be stayed pending the appeal, unless otherwise ordered by the divisional court or judge of the high court, or by a judge of the county court appealed from; and the order may be on such terms as the court or judge applied to thinks fit. Rules of 1 Jan., 1896, 1489 (838), amended. (See 58 V. c. 13, s. 8.)

By sub-section (*c*) of Con. Rule 352, the time of the Long vacation and Christmas vacation, which is not to be

reckoned in the computation of the time allowed for "doing an act or taking a proceeding in appealing to the court of appeal, or to a divisional court," is expressly declared to run in connection with county court appeals.

In Fawkes v. Swazie, 31 O.R. 256, it was held that the month begins to run from the day of the judicial opinion or decision oral or written, pronounced or delivered, and the judgment or order founded upon it must be referred to that date. If such opinion or decision is not pronounced or delivered in open court it cannot be said to be pronounced or delivered until the parties are notified of it. *Quaere*, whether after a judgment has been settled and entered a judge has power to re-settle it. This was followed in Allen v. Place, 15 O.L.R. 148.

In Lees v. O. & N. Y. Ry. Co., 31 O.R. 567, it was held that neither the above section nor Rule 795 prohibited a county court appeal from being set down to be heard at a sitting of the divisional court commencing within thirty days from the decision complained of, as these provisions were designed only to prevent the appeal being unduly delayed.

(2) Subject to Rules of Court a divisional court, or a judge of the high court, notwithstanding that the judge of the county or district court has not certified the pleadings and other papers, or that they have not been filed in the high court, may extend the time for setting down the appeal or for giving notice of setting down or for doing any act or taking any proceeding in or in relation to the appeal; and may, if the certificate is incomplete or incorrect, direct the same to be amended or to be sent back to the judge for amendment. 4 Edw. VII. c. 10, s. 14.

(3) Except as provided by sub-section 2, upon

an appeal from a judgment, order or decision given upon the merits at the trial or hearing, such further evidence shall be admitted on special grounds only and not without the special leave of the court. Con. Rule 498.

By section 12 of 63 V. c. 17, the following proviso was added to former section 57:—

Provided, however, that a judge of the high court may extend the time hereinbefore limited for setting down the appeal where it is shewn that the appellant has been unable to produce the notes of the evidence given at the trial within the time so limited, or to have the pleadings and other papers in the cause certified, and this provision shall be construed retroactively.

By section 15 of 4 Edw. VII. c. 10, this proviso was repealed, and the two following sub-sections were added by section 14 to the original section 57:—

"(2) The divisional court shall be deemed to be seized of the appeal if and when the judge has, pursuant to section 55, certified to the pleadings and other papers and the same have been filed in the high court.

"(3) A divisional court may, subject to the rules of court, extend the time for setting down the appeal or for giving notice of setting down or for doing any act or taking any proceedings in or in relation to the appeal, and may if the certificate is incomplete or incorrect direct the same to be amended or to be sent back to the judge for amendment as to the divisional court may seem just."

The above new sub-section (2) has now been substituted for the latter. The application of the word "such" in the new sub-section (3), which is a modification of Con. Rule 498, is not very clear. For form of order see form No. 16.

46.—(1) On an appeal the divisional court may set aside the judgment and may direct any other judgment to be entered, or may direct a new trial to be had, and make such other order as to costs and otherwise as appears just. R.S.O. 1897, c. 55, s. 54.

See Farmers' Bank v. Big Cities R. & A. Co., 1 O.W.N. 397.

The following rules are also applicable:—

1217. Motions against judgments and for new trials in actions in the county courts shall be disposed of upon the like grounds and principles as in the high court. Con. Rule 1258.

489. (1) In all appeals, either to the court of appeal or to the high court or a judge, or hearings in the nature of appeals, and on all motions to set aside a verdict or finding of a jury, and to set aside or vary a judgment, the court or judge appealed to shall have all the powers and duties as to amendment and otherwise of the court, judge or officer appealed from, and full discretionary power to receive further evidence upon questions of fact; such evidence to be either by oral examination before the court or judge appealed to, or as may be directed.

(2) Such further evidence may be given without special leave (*a*) 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 order or decision given upon the merits at the trial or hearing of any cause or matter, such further evidence (save as aforesaid) shall be admitted on special grounds only, and not without the special leave of the court. Con. Rule 585.

615. Upon a motion for judgment, or for a new trial, the court may, (*a*) if satisfied that it has before it all the

materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly; or may, if it is of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit. Con. Rule 755.

(2) The decision of the divisional court shall be certified by the registrar to the clerk of the court with whom the judgment or order appealed from was entered, who shall thereupon cause the same to be entered in the proper judgment or order book, and all subsequent proceedings may be taken thereupon, as if the decision had been given in the court below. Con. Rule 818.

This sub-section is a modification of Rule 818, which applies only to the court of appeal. Heretofore the practice on appeals from the county court to the divisional court was to issue the usual order as on an appeal from a judge of the high court. For form of certificate now required, see form No. 17.

In McVeain v. Ridler, 17 P.R. 353, it was held by the court of appeal that no further appeal lies in a county court case, either with or without leave, from the divisional court to the court of appeal. The learned editors of Holmsted and Langton's Judicature Act (3 ed.), p. 1038, seem to think that, notwithstanding this decision, an appeal now lies to the court of appeal from the divisional court in county court cases; and they refer to sections 75 and 76 of the Judicature Act, and also to Christie v. Cooley, 6 O.W.R. 214. The writer thinks, however, that a perusal of these sections

shews that they are intended to apply only to "actions or proceedings in the high court." With regard to Christie v. Cooley, it is true that the action originated in the county court, but an order had been made by the divisional court, on consent, transferring the action to the high court, and granting leave to appeal to the court of appeal; and no objection to the jurisdiction was taken on the hearing in the latter court. Possibly this roundabout method might be adopted successfully in certain cases, where all parties are anxious to obtain the opinion of the court of appeal.

As regards appeals to the supreme court, there is a difference between the law applicable to the Province of Ontario, on the one hand, and to the Provinces of Nova Scotia, New Brunswick, British Columbia and Prince Edward Island on the other. It is provided by sub-section (*b*) of section 37 of the Supreme Court Act, that an appeal may be had to that court from the latter provinces in cases where "the sum or value of the matter in dispute amounts to $250 or upwards, and in which the court of first instance possesses concurrent jurisdiction with a superior court." In these provinces a county court has such concurrent jurisdiction. See R.S.N.S. 1900, c. 156, ss. 28-31 and 87, C.S. N.B. 1903, c. 16, ss. 9-12, and c. 111, s. 379; R.S.B.C. 1897, c. 52, ss. 23, 27, 32, 40 and 42; and 41 V. (P.E.I.) c. 12. Appeal from the Province of Ontario are governed by section 36 and 48 of the Supreme Court Act, which limit the appeal to one "from any final judgment of the highest court of final resort, in cases in which the court of original jurisdiction is a superior court," and then only where "the matter in controversy in the appeal exceeds the sum or value of $1,000, exclusive of costs," and in certain other specified cases.

In Tucker v. Young, 30 S.C.R. 185, the action had been commenced in the county court of Lambton, and upon defendant pleading want of jurisdiction in that court, an

order was made transferring the action to the high court. At the trial a reference was ordered to a drainage referee, who held that the plaintiff had no cause of action, which holding was reversed by the court of appeal (26 A.R. 162). An appeal to the supreme court of Canada was quashed with costs, on the ground that the action did not originate in a superior court, Gwynne, J., dissenting. The latter judge held that as the case had been transferred from the county court to the high court because the former court had no jurisdiction, it was to all intents and purposes as if it had been originally entered in the high court.

TARIFF OF COSTS.

47.—(1) The Board of County Judges appointed under the Division Courts Act, may frame a tariff of costs to be allowed to solicitors and counsel in respect of actions, matters and proceedings in the county and district courts.

(2) The Board shall certify to the judges authorized to make rules under the Judicature Act, any tariff so framed, or any alteration thereof; and the judges may approve, disallow or amend such tariff or alteration; and such tariff or alteration when approved, shall have the same force and effect as if made under that Act by the judges approving the same. R.S.O. 1897, c. 55, s. 50.

The present tariffs of costs are prescribed by the following rules:—

1178. Costs shall be allowed and taxed according to the table of costs set forth in the 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. Con. Rule 1217, amended.

1179. The fees and disbursements payable in stamps or otherwise upon proceedings in the high court and court of appeal and in the county court shall henceforth be those enumerated in the Tariff B appended to these rules. Con. Rule 1218, amended.

For tariffs of costs, see *post*.

Rule 1199(3) as to præcipe orders for security for costs, provides that "in actions in the county court, the amount of the security shall be $200." Rule 1209(3) as to security on motions for judgment, provides that "in actions in the county court, the amount of the partial security shall be $25."

REPEAL.

48. The County Courts Act and all amendments thereto, and sections 5 to 8 and 12 to 21, and section 23 of the Unorganized Territory Act, and all amendments thereto and sub-sections 121*f*, 121*g*, and 121*h* of section 3 of the Act passed in the 9th year of His Majesty's reign, chaptered 27, are repealed.

As to the effect of the non-repeal of sections 9, 10 and 11 of the Unorganized Territory Act, on the jurisdiction of certain district courts, see notes to section 1 of the County Judges Act, and at the end of sub-section (1) of section 21 of this Act, *supra*, where these sections are reproduced.

49. This Act, except sections 38 to 46, shall not come into force until the first day of August, 1910.

The provisions of this Act which came into force immediately after its passing are those relating to appeals.

THE GENERAL SESSIONS ACT

9 EDW. VII. CHAPTER 30 (1909).

An Act respecting the Courts of General Sessions of the Peace.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *"The General Sessions Act."* R.S.O. 1897, c. 56, s. 1.

2. In this Act "the court" shall mean the Court of the General Sessions of the Peace.

JURISDICTION.

3. The courts of general sessions of the peace shall have jurisdiction to try all criminal offences

except homicide, and the offences mentioned in section 583 of the Criminal Code of Canada. (*New.*) (*See* R.S.O. 1897, c. 58.)

The following section formed part of the Law Reform Act, 1909, as first introduced, but it was subsequently dropped:—

22. (1) Subject to the provisions of sub-sections 2 and 3, all courts of general sessions of the peace are hereby abolished, and the jurisdiction, power and authority now vested in or which are possessed or may be exercised by the court of general sessions of the peace for any county or district, shall hereafter be vested in and shall be possessed and may be exercised by the county or district court of such county or district.

(2) In the County of York there shall be excepted from the jurisdiction, power and authority vested in the county and district courts under sub-section 1, the jurisdiction, power and authority now vested in or possessed or which may be exercised by the court of general sessions of the peace for the County of York to try indictable offences.

(3) In all matters and proceedings which have been fully heard and in which judgment shall not have been given, or having been given has not been signed, drawn up, passed, entered or otherwise perfected, judgment or order may be given or made, signed, drawn up, passed, entered or otherwise perfected in the name of the same court and by the same judges and officers and generally in the same manner as if this section had not been enacted, and for these purposes such court shall be deemed to continue to exist.

(4) Every judgment or order of any such court which has been perfected may be executed and enforced and if necessary amended or discharged by the proper county or

district court in the same manner as if it had been a judgment or order of that court and all matters and proceedings pending in any of the courts hereby abolished shall be continued and concluded in and before the proper county or district court which shall have jurisdiction for so continuing and concluding matters criminal as well as civil.

(5) The proper county or district court shall have the same jurisdiction as to all such matters and proceedings as if the same had been commenced therein and so far as relates to the form and manner of procedure, the same shall be continued and concluded in and before such court conformably to the procedure thereof, or if there is no such procedure applicable the procedure shall be such as such county or district court shall direct or prescribe.

(6) In this section the proper county or district court shall mean the county or district court of the county or district in which under the provisions of sub-section 1 the jurisdiction of the court of general sessions of the peace for the county or district to which the particular provision relates is vested.

The following are the provisions of the Criminal Code, as amended by 8-9 Edw. VII. c. 9, s. 2, as to the jurisdiction of the sessions:—

582. Every court of general or quarter sessions of the peace, when presided over by a superior court judge, or a county or district court judge, or in the Cities of Montreal and Quebec by a recorder or judge of the sessions of the peace, and in the Province of New Brunswick every county court judge has power to try any indictable offence except as hereinafter provided. 55-56 V. c. 29, s. 539; 56 V. c. 32, s. 1.

583. No court mentioned in the last preceding section has power to try any offence under sections—

(*a*) seventy-four, treason; seventy-six, accessories after the fact to treason; seventy-seven, seventy-eight, and

seventy-nine, treasonable offences; eighty, assaults on the King; eighty-one, inciting to mutiny; eighty-five, unlawfully obtaining and communicating official information; eighty-six, communicating information acquired in office; or,

(*b*) One hundred and twenty-nine, administering, taking or procuring the taking of oaths to commit certain crimes; one hundred and thirty, administering, taking or procuring the taking of other unlawful oaths; one hundred and thirty-four, seditious offences; one hundred and thirty-five, libels on foreign sovereigns; one hundred and thirty-six, spreading false news; or,

(*c*) One hundred and thirty-seven, to one hundred and forty inclusive, piracy; or,

(*d*) One hundred and fifty-six, judicial, etc., corruption; one hundred and fifty-seven, corruption of officers employed in prosecuting offenders; one hundred and fifty-eight, frauds upon the government; one hundred and sixty, breach of trust by a public officer; one hundred and sixty-one, municipal corruption; one hundred and sixty-two, (*a*) selling offices; or,

(*e*) Two hundred and sixty-three, murder; two hundred and sixty-four, attempt to murder; two hundred and sixty-five, threat to murder; two hundred and sixty-six, conspiracy to murder; two hundred and sixty-seven, accessory after the fact to murder; two hundred and sixty-eight, manslaughter; or,

(*f*) Two hundred and ninety-nine, rape; three hundred, attempt to commit rape; or,

(*g*) Three hundred and seventeen to three hundred and thirty-four, defamatory libel; or,

(*h*) Four hundred and ninety-eight, combination in restraint of trade; or,

(*i*) Conspiracy or attempting to commit, or being accessory after the fact to any of the offences in this section before mentioned; or,

(*j*) Any indictment for bribery or undue influence, personation or other corrupt practice under the Dominion Elections Act. 55-56 V. c. 29, s. 540; 57-58 V. c. 57, s. 1; 63-64 V. c. 46, s. 3.

The following are the provisions of R.S.O. 1897, c. 58, intituled "An Act relating to the Jurisdiction of Courts of General Sessions of the Peace and other Inferior Criminal Courts":—

1. No court of general sessions of the peace, no county or district judge's criminal court, no judge of any county court, no junior or deputy judge thereof, authorized to act as chairman of the general sessions of the peace for the county, no judge of any provisional judicial district, no judge of any district court authorized respectively to act as chairman of the general sessions of the peace, nor any court but the high court of justice or courts of assize, *nisi prius*, oyer and terminer and general gaol delivery, shall have power to try any treason, any crime punishable with death, or any homicide, or any libel. 53 V. c. 18, s. 1.

2. The courts of general sessions of the peace and the county and district judge's criminal courts shall have jurisdiction to try any person for any offence which was formerly included under any of the provisions of sections 28 to 31, both inclusive, of the Revised Statutes of Canada, chapter 165, intituled "An Act respecting Forgery." 53 V. c. 18, s. 2; 60 V. c. 15, Sched. A. (38).

In Regina v. Toland, 22 O.R. 505, it was held by MacMahon, J., that procedure in criminal matters which by the B. N. A. Act, s. 97, sub-s. 7, is assigned exclusively to the Parliament of Canada, includes the trial and punishment of the offender, and that, therefore, this section 2 was *ultra vires* of the provincial legislature. In the subsequent case of Regina v. Levinger, 22 O.R. 690, however, it was held by a divisional court that the power granted by the B.N.A.

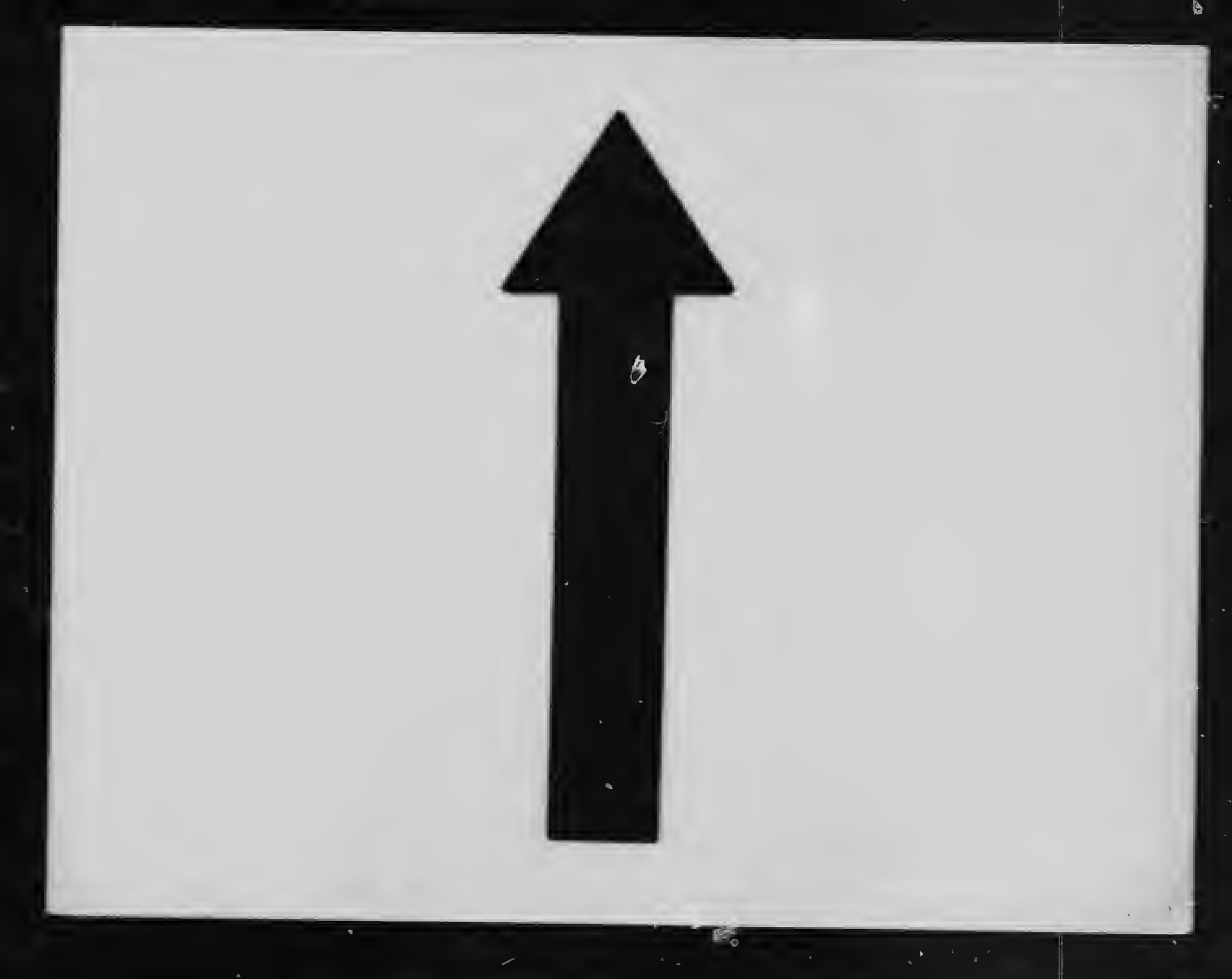
Act, s. 78, sub-s. 14, to the provincial legislature, constituting courts of civil and criminal jurisdiction, necessarily includes the power of giving jurisdiction to those courts and impliedly includes the power of enlarging, altering and amending the jurisdiction of such courts. It was further held that the above section, so far as it provides that the courts of general sessions of the peace have jurisdiction to try any person for any offence under the Act respecting Forgery, is within the powers of the legislature of Ontario as being in relation to the constitution of a provincial court of criminal jurisdiction, and does not in any way trench upon the exclusive authority given to the Parliament of Canada by section 91, sub-section 27, to make laws in relation to criminal law and criminal procedure.

The following sections of the General Sessions Act, R.S.O. 1897, c. 56, are expressly excepted from the repeal of that Act by 9 Edw. VII. c. 30:—

2. The authority under which commissions of the peace have been issued, and the authority under which the courts of general sessions of the peace have been held and are now held, and all matters and things done by or by virtue of the same, shall be, so far as relates to the authority under which such commissions were issued and such courts have been held, good and valid. R.S.O. 1887, c. 48, s. 2.

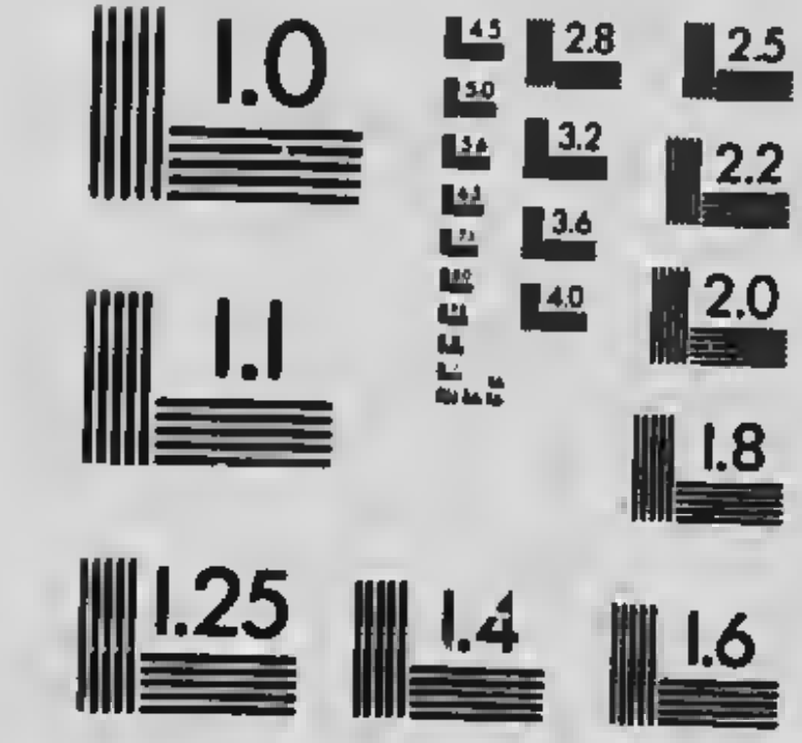
9. It shall not be necessary, in opening any court of general sesssions, to read the commission of the peace, or other commission issued for the county for which the court is held; but the court shall have the same powers and authorities, and proceed in the same manner, as if the commission had been read. R.S.O. 1887, c. 48, s. 9.

In Regina v. Grover, 23 O.R. 92, the defendant was convicted at the general sessions on an indictment for a nuisance in obstructing the highway by the erection of a wall thereon, and directed to abate the nuisance. This not having



MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



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been done, the sessions made an order directing the sheriff to abate the nuisance at defendant's costs and charges, and to pay the county Crown Attorney forthwith after taxation the costs of the application and order and the sheriff's fees and costs, and incidental expenses arising out of the execution of the order. It was held that the sessions had no authority to make the order to the sheriff, the proper mode in such cases being by a writ of *de nocumento amovendo;* that the order being a judicial act was properly removed by certiorari and must be quashed. The question as to the right of the general sessions to award costs was also considered.

The appellate jurisdiction of the general sessions is prescribed by certain sections of the Criminal Code and of the Ontario Summary Convictions Act. The section of the former is as follows:—

749. (As amended, 1907.) Unless it is otherwise provided in any special Act under which a conviction takes place or an order is made by a justice for the payment of money or dismissing an information or complaint, any person who thinks himself aggrieved by any such conviction or order or dismissal, the prosecutor or complainant, as well as the defendant, may appeal,—

(*a*) In the Province of Ontario, when the conviction adjudges imprisonment only, to the court of general sessions of the peace; and in all other cases to the division court of the division of the county in which the cause of the information or complaint arose.

The provisions of the latter Act, R.S.O. 1897, c. 90, s. 7, as amended by 3 Edw. VII. c. 7, s. 20, and 7 Edw. VII. c. 23, s. 6(2), are as follows:—

7. Any party who considers himself aggrieved by a conviction or order made by a justice of the peace or by a police or stipendiary magistrate under the authority of any statute in force in Ontario and relating to matters within the legisla-

tive authority of the legislature of Ontario, or by an order dismissing an information or complaint relating to any such matter, may, unless it is otherwise provided by the particular Act under which the conviction or order is made, appeal therefrom, where the conviction or order adjudges imprisonment only, to the general sessions of the peace, and in all other cases to the division court of the division in which the cause of the information or complaint arose.

The subsequent sections of both statutes provide for the procedure on such appeals, but a discussion of these provisions would be foreign to this work, as they come more properly within the scope of magistrates' manuals.

SITTINGS.

4.—(1) Except in the Counties of Carleton, Middlesex, Wentworth and York, sittings of the court shall be held in every county semi-annually, commencing on the second Tuesday in the months of June and December in each year.

(2) In the County of York, sittings of the court shall be held four times in the year, commencing on the first Tuesday in the months of December and March, and on the second Tuesday in the months of May and September in each year. R.S.O. 1897, c. 56, s. 4.

(3) In the Counties of Carleton, Middlesex and Wentworth, two such sittings shall be held in each year, to commence on the first Tuesday in June and December.

This section was amended as above by section 32 of the Statute Law Amendment Act, 1910, to correspond with the

changes made in section 15 of the County Courts Act. As that portion of the latter Act is, by section 49 thereof, not to come into force until the first day of August, 1910, it is provided by sub-section (4) of section 32 above referred to, that the changes made in the above section and in section 6, *infra*, shall not come into effect until the same date.

5. The sittings of the court shall be held in the county town of the county, unless the Lieutenant-Governor, by proclamation, authorizes the holding of the sittings at some other place in the county. R.S.O. 1897, c. 56, s. 5.

6. In the provisional judicial districts sittings of the court shall be held each year as follows:—

(*a*) At Kenora, on the first Tuesday in the month of June, and the second Tuesday in the month of November.

(*b*) At Port Arthur, on the third Tuesday in the month of May, and the second Tuesday in the month of November.

(*c*) At Sault Ste. Marie, on the second Tuesday in the months of June and November. R.S.O. 1897, c. 109, s. 21, pars. 1-3.

(*d*) At Gore Bay, on the last Tuesday in the month of May and the third Tuesday in the month of October. 62 V.(2) c. 14, s. 7.

(*e*) At North Bay, on the second Tuesday in the months of June and November.

(*f*) At Parry Sound, on the first Tuesday in the months of June and December. R.S.O. 1897, c. 109, s. 21(6); 4 Edw. VII. c. 10, s. 25.

(*g*) At Bracebridge, on the third Tuesday in the months of June and November. R.S.O. 1897, c. 109, s. 21, pars. 5-7.

(*h*) At Sudbury, on the first Tuesday in the months of June and November. 7 Edw. VII. c. 25, s. 4.

(*i*) At Fort Frances, on the first Tuesday in the months of April and November. 8 Edw. VII. c. 36, s. 4.

These are the same dates fixed by section 16 of the County Courts Act for the sittings of the district courts with jury, except at Port Arthur, North Bay and Bracebridge, as to which the dates differ. The dates for Kenora and Fort Frances were changed by sub-section (3) of section 32 of the Statute Law Amendment Act, 1910, to correspond with the dates fixed by the above mentioned section of the County Courts Act, but apparently the other variances were not discovered. See notes to section 16 of the County Courts Act, *supra*.

7. The judge of the county or district court as the case may be, or, in case of his death, illness or absence or at his request the junior or deputy judge shall be the chairman of the court and shall preside at the sittings thereof. R.S.O. 1897, c. 56, s. 6.

8. Where a judge is present, it shall not be necessary, in order to constitute the court, that an

associate or other justice of the peace should be present. R.S.O. 1897, c. 56, s. 7.

9.—(1) Where a judge is unable to hold the sittings at the time appointed, the sheriff or his deputy, may, by proclamation adjourn the court to any hour on the following day to be by him named, and so from day to day until a judge is able to hold the court or until he receives other directions from the judge or from the Attorney-General.

(2) The sheriff shall forthwith give notice of such adjournment to the Attorney-General. R.S.O. 1897, c. 56, s. 8.

RESCINDING ORDERS OF COURT.

10. Except where otherwise provided by law, an order which has been passed or recorded by any number of justices of the peace shall not be rescinded unless at least the same number is present. R.S.O. 1887, c. 56, s. 10.

CLERKS OF THE PEACE.

11.—(1) There shall be a clerk of the peace for every county and district, who shall be appointed by the Lieutenant-Governor in Council. *New.*

(2) No person shall be appointed clerk of the peace who is not a barrister of at least three years' standing at the Bar of Ontario; and, except in the County of York, every clerk of the peace shall be *ex-*

officio county or district Crown Attorney for the county or district of which he is clerk of the peace.

(3) Except in the County of York, whenever a vacancy occurs in the office of the clerk of the peace for a county or district in which the clerk of the peace was not, previous to such vacancy occurring, also county or district Crown Attorney, the county or district Crown Attorney shall be *ex-officio* clerk of the peace.

(4) Where a person holding the office of county or district Crown Attorney and clerk of the peace desires, on account of the condition of his health or from his age, to resign the former, retaining the latter office, he may do so with the approval of the Lieutenant-Governor in Council; and in such case the person appointed in his place shall, on a vacancy occurring in the office of the clerk of the peace, be *ex-officio* clerk of the peace.

(5) In the County of York, the offices of clerk of the peace and county Crown Attorney may be held by different persons. R.S.O. 1897, c. 56, s. 11.

As to fees of clerk of the peace, see R.S.O. 1897, c. 101.

TARIFF OF FEES.

12.—(1) The Board of county judges appointed under the Division Courts Act, or the majority of them, may frame a tariff of fees and costs to be allowed in respect of proceedings in the courts of

general sessions of the peace to counsel and solicitors practising therein, and to witnesses and to the clerk of the peace, including the county and district Crown Attorney.

(2) The Board or any three members thereof shall certify any tariff so framed or any amendment thereof to the judges authorized to make rules under the Judicature Act, who may approve, disallow or amend such tariff or amendment.

(3) A tariff so approved, or amended and approved, shall have the same force and effect as if it had been enacted by the legislature. R.S.O. 1897, c. 56, s. 12.

The present tariff of fees is contained in schedule to R.S.O. 1897, c. 101, and will be found *infra*.

13. Chapter 56 of the Revised Statutes of Ontario, 1897, except sections 2 and 9, and all amendments to the said Act, and section 21 of the Unorganized Territory Act, are repealed.

COUNTY JUDGES' CRIMINAL COURTS ACT

9 EDW. VII. CHAPTER 31 (1909).

An Act respecting the County Court Judges' Criminal Courts.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *"The County Court Judges' Criminal Courts Act."*

2.—(1) The judge of every county and district court, or the junior or deputy judge thereof, authorized to preside at the sittings of the court of the general sessions of the peace, is constituted a court of record for the trial, out of sessions and without a jury, of any person committed to gaol on a charge of being guilty of any offence for which such person may be tried at a court of general sessions of the peace, and for which the person so committed consents to be tried out of sessions, and without a jury;

and the court so constituted shall have the powers and perform the duties mentioned in Part XVIII. of the Criminal Code. R.S.O. 1897, c. 57, s. 1.

(2) The court so constituted shall be called the County or District Court Judges' Criminal Court of the county or district in which the same is held, as the case may be. R.S.O. 1897, c. 57, s. 2; 1 Edw. VII. c. 12, s. 7.

3. Chapter 57 of the Revised Statutes of Ontario, 1897, and all amendments thereto are repealed.

See section 15 of the County Courts Act, *supra*, and notes thereto, also R.S.C. 1906, c. 38, ss. 30, 31 and 32, as to territorial jurisdiction of county court judges.

As to offences which may be tried at the sessions, see notes to the General Sessions Act, *supra*.

The following are the provisions of the part of the Criminal Code above referred to, as amended by 6-7 Edw. VII. c. 45, s. 6, and 8-9 Edw. VII. c. 9, s. 2:—

824. (1) The judge sittting at any trial under this part for all the purposes thereof and proceedings connected therewith or relating thereto, shall be a court of record, and in every province of Canada, except in the Province of Quebec, and except as hereinafter provided, such court shall be called the county court judge's criminal court of the county or union of counties, or judicial district, in which the same is held.

(2) The record in any such case shall be filed among the records of the court over which the judge presides, and as part of such records. 55-56 V. c. 29, s. 764; 6 & 7 Edw. VII. c. 45, s. 6.

825. Every person committed to gaol for trial on a charge of being guilty of any of the offences which are mentioned in section five hundred and eighty-two as being within the jurisdiction of the general or quarter sessions of the peace, may, with his own consent, be tried in any province of Canada, and, if convicted, sentenced by the judge.

(2) An entry shall be made of such consent at the time the same is given.

(3) Such trial shall be had under and according to the provisions of this part, out of sessions and out of the regular term or sittings of the court, and whether the court before which, but for such consent, the said person would be triable for the offence charged or the grand jury thereof is or is not then in session.

(4) A person who has been bound over by a justice or justices under the provisions of section six hundred and ninety-six, and has been surrendered by his sureties, and is in custody on the charge, or who is otherwise in custody awaiting trial on the charge, shall be deemed to be committed for trial within the meaning of this section. 63-64 V. c. 46, s. 3; 6 & 7 Edw. VII. c. 45, s. 6.

(5) Where an offence charged is punishable with imprisonment for a period exceeding five years, the Attorney-General may require that the charge be tried by a jury, and may so require notwithstanding that the person charged has consented to be tried by the judge under this part, and thereupon the judge shall have no jurisdiction to try or sentence the accused under this part.

(6) A person accused of any offence within sub-section 1 of this section, who has been bound over by a justice or justices under the provisions of section 696 and is at large under bail, may notify the sheriff that he desires to make his election under this part, and thereupon the sheriff shall notify the judge, or the prosecuting officer, as provided by section 826.

(7) In such case, the judge having fixed the time when, and the place where the accused shall make his election, the sheriff shall notify the accused thereof, and the accused shall attend at the time and place so fixed, and the subsequent proceedings shall be the same as in other cases under this part.

(8) The recognizance taken when the accused was bound over as aforesaid shall in such case be obligatory upon each of the persons bound thereby, as to all things therein mentioned, with reference to the appearance of the accused at the time and place so fixed and to the trial and proceedings thereupon, in like manner as if such recognizance had been originally entered into with reference thereto: Provided that notice in writing shall be given either personally or by leaving the same at the place of residence, as described in the recognizance, of the persons bound as sureties by such recognizance, that the accused is to appear at such time and place to make his election as aforesaid.

826. Every sheriff shall, within twenty-four hours after any prisoner charged as aforesaid is committed to gaol for trial, notify the judge in writing that such prisoner is so confined, stating his name and the nature of the charge preferred against him, whereupon, with as little delay as possible, such judge shall cause the prisoner to be brought before him.

(2) Where the judge does not reside in the county in which the prisoner was committed, the judge having received the notification and having obtained the depositions on which the prisoner was committed, if any, may forward them to the prosecuting officer with instructions to cause the prisoner to be brought before him instead of the judge, naming as early a day as possible for the trial in case the prisoner shall elect to be tried by the judge, without a jury, and the prosecuting officer shall, in such case, with as little delay as possible cause the prisoner to be brought before him.

827. The judge, having first obtained the depositions on which the prisoner was so committed, if any, or the prosecuting officer, as the case may be, shall state to the prisoner,—

(*a*) That he is charged with the offence, describing it;

(*b*) That he has the option to be tried forthwith before a judge without the intervention of a jury, or to remain in custody or under bail, as the court decides, to be tried in the ordinary way by the court having criminal jurisdiction.

(2) If the prisoner has been brought before the prosecuting officer, and consents to be tried by the judge, without a jury, the trial shall proceed on the day named by the judge in the manner provided by the next following sub-section.

(3) In such case or if the prisoner has been brought before the judge and consents to be tried by him without a jury, the prosecuting officer shall prefer the charge against him for which he has been committed for trial, and if, upon being arraigned upon the charge, the prisoner pleads guilty, the prosecuting officer shall draw up a record as nearly as may be in form 60.

(4) Such plea shall be entered on the record, and the judge shall pass the sentence of the law on such prisoner, which shall have the same force and effect as if passed by a court having jurisdiction to try the offence in the ordinary way.

828. If the prisoner on being brought before the prosecuting officer or before the judge as aforesaid demands a trial by jury, he shall be remanded to gaol.

(2) Any prisoner who has elected to be tried by a jury, may, notwithstanding such election, at any time before such trial has commenced, and whether an indictment has been preferred against him or not, notify the sheriff that he desires to re-elect, and it shall thereupon be the duty of the

sheriff and judge or prosecuting officer to proceed as directed by section eight hundred and twenty-six.

(3) Thereafter unless the judge, or the prosecuting officer acting under sub-section two of section eight hundred and twenty-six, is of opinion that it would not be in the interests of justice that the prisoner should be allowed to make a second election, the prisoner shall be proceeded against as if his said first election had not been made. 63-64 V. c. 46, s. 3. Provided, that if an indictment had been preferred against the prisoner the consent of the prosecuting officer shall be necessary to a re-election, and in such case the sheriff shall take no action upon being notified of the prisoners' desire to re-elect unless such consent is given in writing.

829. If one of two or more prisoners charged with the same offence demands a trial by jury, and the other or others consent to be tried by a judge without a jury, the judge, in his discretion, may remand all the said prisoners to gaol to await trial by a jury. 55-56 V. c. 29, s. 768.

830. If, under Part XVI. or Part XVII., any person has been asked to elect whether he would be tried by the magistrate or justices, as the case may be, or before a jury, and he has elected to be tried by a jury, and if such election is stated in the warrant of committal for trial, the sheriff, prosecuting officer or judge shall not be required to take the proceedings directed by this part.

(2) If such person, after his said election to be tried by a jury, has been committed for trial he may, at any time before the regular term or sittings of the court at which such trial by jury would take place, notify the sheriff that he desires to re-elect.

(3) In such case it shall be the duty of the sheriff to proceed as directed by section eight hundred and twenty-six, and thereafter the person so committed shall be proceeded

against as if his said election in the first instance had not been made. 55-56 V. c. 29, s. 769.

831. Proceedings under this part commenced before the judge may, where such judge is for any reason unable to act, be continued before any other judge competent to try prisoners under this part in the same judicial district, and such last mentioned judge shall have the same powers with respect to such proceedings as if such proceedings had been commenced before him, and may cause such portion of the proceedings to be repeated before him as he shall deem necessary. 55-56 V. c. 29, s. 770.

832. If, on the trial under Part XVI. or Part XVII. of any person charged with any offence triable under the provisions of this part, the magistrate or justices decide not to try the same summarily, but commit such person for trial, such person may afterwards, with his own consent, be tried under the provisions of this part. 55-56 V. c. 29, s. 771.

833. If the prisoner upon being arraigned under this part consents as aforesaid and pleads not guilty the judge shall appoint an early day, or the same day, for his trial, and the prosecuting officer shall subpœna the witnesses named in the depositions, or such of them and such other witnesses as he thinks requisite to prove the charge, to attend at the time appointed for such trial, and the judge may proceed to try such prisoner, and if he be found guilty sentence as aforesaid shall be passed upon him.

(2) If he be found not guilty the judge shall immediately discharge him from custody, so far as respects the charge in question.

(3) The prosecuting officer in such case shall draw up a record as nearly as may be in form 61. 55-56 V. c. 29, s. 772.

834. The prosecuting officer may, with the consent of the judge, prefer against the prisoner a charge for any offence for which he may be tried under the provisions of this part other than the charge for which he has been com-

mitted to gaol for trial or bound over, although such charge does not appear or is not mentioned in the depositions upon which the prisoner was committed or is for a wholly distinct and unconnected offence: Provided, that the prisoner shall not be tried under this part or upon any such additional charge unless with his consent obtained as hereinbefore provided.

(2) Any such charge may thereupon be dealt with, prosecuted and disposed of, and the prisoner may be remanded, held for trial or admitted to bail thereon, in all respects as if such charge had been the one upon which the prisoner was committed for trial. 55-56 V. c. 29, s. 773.

835. The judge shall, in any case tried before him, have the same power as to acquitting or convicting, or convicting of any other offence than that charged, as a jury would have in case the prisoner were tried by a court having jurisdiction to try the offence in the ordinary way, and may render any verdict which might be rendered by a jury upon a trial at a sitting of any such court. 55-56 V. c. 29, s. 774.

836. If the prisoner elects to be tried by a judge without the intervention of a jury the judge may, in his discretion, admit him to bail to appear for his trial, and extend the bail, from time to time, in case the court be adjourned or there is any other reason therefor.

(2) Such bail may be entered into and perfected before the clerk of the court. 55-56 V. c. 29, s. 775.

836a. Whenever a prisoner who has been admitted to bail pursuant to section 836, does not appear at the time mentioned in the recognizance or to which the court is adjourned, the judge may issue a warrant for his apprehension which may be executed in any part of Canada.

837. If a prisoner elects to be tried by a jury the judge may, instead of remanding him to gaol, admit him to bail, to appear for trial at such time and place and before such court as is determined upon, and such bail may be entered

into and perfected before the clerk of the court. 55-56 V. c. 29, s. 776.

838. The judge may adjourn any trial from time to time until finally terminated. 55-56 V. c. 29, s. 777.

839. The judge shall have all the powers of amendment which are possessed by any court before which an indictment may be tried under this Act. 55-56 V. c. 29, s. 778.

840. Any recognizance taken under section six hundred and ninety-two, for the purpose of binding a prosecutor or a witness, shall, if the person committed for trial elects to be tried under the provisions of this part, be obligatory on each of the persons bound thereby, as to all things therein mentioned with reference to the trial by the judge under this part, as if such recognizance had been originally entered into for the doing of such things with reference to such trial: Provided that at least forty-eight hours' notice in writing shall be given, either personally or by leaving the same at the place of residence of the persons bound by such recognizance as therein described, to appear before the judge at the place where such trial is to be had. 55-56 V. c. 29, s. 779.

841. Every witness, whether on behalf of the prisoner or against him, duly summoned or subpœned to attend and give evidence before the judge sitting on any such trial on the day appointed for the same shall be bound to attend and remain in attendance throughout the trial.

(2) If he fails so to attend he shall be held guilty of contempt of court, and may be proceeded against therefor accordingly. 55-56 V. c. 29, s. 780.

842. Upon proof to the satisfaction to the judge of the service of a subpœna upon any witness who fails to attend before him as required by such subpœna, and upon such judge being satisfied that the presence of such witness before him is indispensable to the ends of justice, he may, by his warrant, cause the said witness to be apprehended and forthwith brought before him to give evidence as required

by such subpœna, and to answer for his disregard of the same.

(2) Such witness may be detained on such warrant before the said judge, or in the common gaol, with a view to secure his presence as a witness; or, in the discretion of the judge, such witness may be released on recognizance with or without sureties, conditioned for his appearance to give evidence as therein mentioned and to answer for his default in not attending upon the said subpœna, as for a contempt.

(3) The judge may, in a summary manner, examine into and dispose of the charge of contempt against any witness who, if found guilty thereof, may be fined or imprisoned, or both, such fine not to exceed one hundred dollars, and such imprisonment to be in the common gaol, with or without hard labour, and not to exceed the term of ninety days, and he may also be ordered to pay the costs incident to the execution of such warrant and of his detention in custody.

(4) Such warrant may be in form 62 and the conviction for contempt in form 13, and the same shall be authority to the persons and officers therein required to act to do as they are therein respectively directed. 55-56 V. c. 29, s. 781.

ONTARIO TARIFF A.

TABLE OF COSTS IN COUNTY COURTS.

General allowances for Plaintiffs and Defendants, as well between Solicitor and Client as between Party and Party.

1.	Instructions to sue in undefended cases	$2.00
2.	In defended cases	3.00
3.	Instructions to defend	3.00
4.	Instructions for petition where no writ of summons issued	1.00

WRITS.

5.	All writs, except writs of execution, subpœnas and concurrent and renewed writs	1.00
6.	Concurrent writ	.75
7.	Renewed writ (except writs of execution)	.75
8.	All writs, except subpœnas, if over four folios, for every folio	.20
9.	Subpœna *ad testificandum*	.50
10.	Subpœna, *duces tecum*	.75
11.	All subpœnas if over four folios, additional per folio	.15
12.	Notice of writ for service, in lieu of writ out of jurisdiction, and copy	.75
13.	Alias and subsequent writs to be allowed as originals	.75
14.	Special endorsement of writ of summons	.75

15. Issuing any writ of execution..... $4.00
Renewal of any writ of execution..... 2.50
(In both cases, including placing same in the sheriff's hands, all attendance, indorsements and letters in connection therewith.)

COPY AND SERVICE OF WRITS OF SUMMONS AND OTHER PROCESS.

16. For copy, including copy of notice required to be indorsed, each..... .75
If over four folios, for every additional folio.. .10
17. Service of each copy of writ, if not done by the sheriff or an officer employed by him, when taxable to solicitor on sheriff's default..... .50
18. If served at a distance of over two miles from the nearest place of business or office of the solicitor serving same, for each mile, beyond such two miles..... .10
19. For service of writ out of jurisdiction.....
(Such allowance as the clerk or judge shall see fit.)

INSTRUCTIONS AFTER COMMENCEMENT OF ACTION.

20. To counsel in special matters..... .50
21. To counsel in common matters..... .25
22. For special affidavits when allowed by the clerk. .50
23. For special affiadvit on production when allowed by the clerk 1.00
24. For pleadings in action and reasons for and against appeal 1.00
25. For counterclaim, when such claim could not, prior to the Ont. Jud. Act, 1881, have formed the subject of a set-off..... 1.00
26. For reply to such counterclaim..... 1.00

27. To amend any pleadings when the amendment is proper	$1.00
28. For confession of defence under Rule 295	1.00
29. For special case in course of action	1.00
30. For special case, when no writ issued, or pleadings had, and no instructions to sue allowed	2.00
31. To add parties by order of court or judge	1.00
32. For brief	.50
33. For adding parties in consequence of marriage, death, assignment, etc.	.50
34. For issue of fact, by consent or judge's order	1.00
35. To defend added parties after death of original party	1.00
36. For confession of action in ejectment as to the whole or in part	.50
37. To strike or reduce special jury	1.00
38. For such other important step or proceeding in the suit as the taxing officer is satisfied warrants such a charge	1.00

DRAWING PLEADINGS, ETC.

39. Statement of claim	1.00
40. If above ten folios, for every folio above ten, in addition	.15
41. Statement of defence, if five folios or under	1.00
42. Counterclaim, if five folios or under	1.00
43. Statement of defence or counterclaim, if above five folios, for every folio in addition	.20
44. Reply and other pleadings for or on behalf of plaintiff or defendant	1.00
45. If above five folios, for each additional folio	.15
46. Petition, per folio	.20
47. Issue for trial of facts by agreement or order for every folio	.20

48. Special case, per folio..... $0.20
49. Drawing interrogatories or answers for any purposes required by law, per folio..... .20
50. Drawing reasons for or against appeal, five folios or under 1.00
For each folio above five..... .15
51. The above charges do not include engrossing or copies to file or serve.
52. Taking cognovit and entering judgment thereon when there has been no previous proceeding and the true debt does not exceed $200..... 8.00
53. For same services when the true debt exceeds $200..... 10.00
54. Drawing and engrossing cognovit and attending execution when there have been previous proceedings..... 1.00
55. Preparing bond to secure costs, bond on any appeal to secure costs or damages or any recognizance (to include drawing affidavits and all attendances in connection with the preparation thereof) 3.00

COPIES.

56. Of pleadings, brief and other documents, when no other provision is made, and copies properly allowable..... .10
57. Certified copy of pleadings or issue for use of judge..... .75
58. For every folio above fifteen, per folio..... .10
59. Of special and common orders, per folio..... .10
60. Of depositions properly taken for use in court—or chambers—in the discretion of the clerk, not exceeding the amount payable to a special examiner for copies .....

NOTICES INCLUDING ONE COPY.

61. Notice in action for recovery of land, to defend for part of premises; not to be allowed when defence limited by appearance	$0.50
62. Notice of plaintiff's or defendant's title in action for recovery of land	.50
63. Notice of admission of right and denial of ouster by joint tenant	.50
64. Notice of confession of action in action for recovery of land as to whole or part	.25
65. Notice in lieu of statement of claim	.25
66. Notice to produce and admit, each	.25
67. Notice by defendant to third party under Rule 209 (not to include copy of statement of claim)	.50
68. In any case where any of the above exceed two folios, for every additional folio	.20
For every additional copy, per folio	.10
69. Particulars of claim, demand, set-off or counterclaim, five folios or under	.75
If exceeding five folios, per folio in addition	.15
70. Notice of motion in court or chambers, drawing and copy to serve, per folio	.15
71. Notice of appearance when entered after time limited by writ, and notice given forthwith but not otherwise	.25
72. Notice of entry of appearance in action for recovery of land by person not named in the writ	.25
73. Notice to sheriff to discharge prisoner out of custody	.40
74. Notice of discontinuance	.25
75. Notice of disputing amount of claim	.25
76. Notice of trial or assessment	.25
77. Demand of residence of plaintiff	.25
78. Demand of names of partners	.25

79. Notice of setting down or motion for judgment or on further directions..... $0.25
80. Notice of taxation or appointment to tax..... .25
81. Notice of filing affidavits, when required (only one notice to be allowed for a set of affidavits filed or which ought to be filed together)..... .25
82. All common notices, demands or appointments not specified ..... .25
83. Every additional copy, per folio..... .10

PERUSALS.

84. Of each of the pleadings as defined by the Judicature Act, 1895, including reasons for and against the appeal ..... .50
85. Of special case by the solicitor of any party, except the one by whom it is prepared, when the case is submitted in the course of the cause 1.00
86. And in special or contested actions or matters, or of interrogatories, and cross-interrogatories on commission, such sum as the taxing officer thinks fit.
87. Of affidavits and exhibits of a party adverse in interest, filed or produced on any application, where perusal is necessary, if twenty folios or under..... .50

ATTENDANCES.

88. Necessary attendances consequent on the service of a notice to produce or admit, or an inspection of documents when produced under order including making admission, altogether..... .50
To be increased by the clerk, in cases of a specially difficult and important nature, to..... 1.00
89. Attending on return of motion, in chambers.... .50
To be increased in the discretion of the judge to 1.50

90. On consultation, or conference, with counsel, in special difficult and important matters, in the discretion of the clerk to..... $1.00
No special attendance to be allowed to a solicitor on proceedings on which he also appears as counsel.
91. Solicitor attending court on trial of cause, when not himself counsel, or partner of counsel.... 1.00
And in special, difficult and important cases, each hour necessarily present at trial..... 1.00
In no case to exceed per day (provided the attendance of each solicitor, and the length of time of such attendance, be duly entered at the time in the book of the clerk, or proved by affidavit) 5.00
92. To hear judgment when not given on close of argument. 1.00
93. To hear judgment when cause on list for judgment, but judgment not given..... 1.00
94. On taxation of costs..... 1.00
95. On revision, per hour, when attendance required by taxing officer, or revision had on order.... .50
96. On revision by judge on appeal..... .50
97. To obtain or give undertaking to appear, when service accepted by a solicitor..... .50
98. Attendance to file or serve..... .25
99. Attendance on warrant, or appointment, of clerk, per hour ..... .50
To be increased in the discretion of the judge not exceeding, per hour..... 1.00
100. Attendance on clerk in special matters, per hour .50
101. Attending to search bond..... .25
102. Attending to search and perusing bond..... .50
103. Every other necessary attendance ..... .25

104. On important points and matters, requiring the attendance of counsel, and when counsel attends, before a master, examiner, referee, registrar, inspector of titles, or county clerk, a counsel fee may be allowed by the judge in lieu of fees for attendance; such counsel fee not to exceed $5.00

BRIEFS.

105. For drawing briefs, five folios or under..... 1.00
106. For drawing briefs, for each folio above five... .10
107. For drawing brief, per folio, for original and necessary matter ..... .20
108. Copy of documents, other than pleadings, per folio..... .10

COURT FEES.

109. Fees after statement of claim, or where statement dispensed with, after filing writ, on defence, joinder of issue, trial, or argument before courts, or any other step in the cause, and on judgments other than præcipe judgments in mortgage cases. No two fees to be allowed to either party when such proceedings are taken or had between the first day of any sittings of the courts, and the first day of the following sittings ..... .50
110. Fee on certified copy of pleadings for judge.... .50
111. Fee on every order or judgment to the party obtaining the same ..... .50
112. Fee on præcipe judgment in mortgage cases.... 2.00

AFFIDAVITS.

113. Drawing affidavits, per folio..... ..... .20
114. Engrossing same to have sworn, per folio..... .10

115. Copies of affidavits, per folio, when necessary.. $0.10
116. Common affidavits of service, including service by post when necessary, or of payment of mileage and of non-appearance, including copy, oath, and attendance to swear..... .75
117. The solicitor for preparing each exhibit..... .10

DEFENDANTS.

118. Appearance including attending to enter..... .50
For each additional defendant..... .10
119. For limiting defence in action for recovery of land in appearance, besides above allowance for appearance; not to be allowed when notice of limiting defence served..... .50

JUDGMENTS OR ORDERS.

120. Drawing minutes of judgments, or orders, per folio, when prepared by solicitor, under direction of judge ..... .50
121. Judgment for non-appearance on specially indorsed writs, and in actions for recovery of land. 50
122. For every hour's attendance before proper officer on settling or passing minutes..... .50
To be increased in the discretion of the judge in special and difficult cases, when the solicitor attends personally, to a sum not exceeding altogether. 2.50

LETTERS.

123. Letter to each defendant before suit, only one letter to be allowed to any defendants who are in partnership and when subject of suit relates to the transactions of their partnership.. .25

124. Common letters, including necessary agency letters..... $0.25
125. With power to the clerk, as between solicitor and client, to increase the fee for special and important letters to an amount not exceeding... 1.00
126. Postages—the amount actually disbursed.
127. For correspondence during the progress of an appeal a reasonable sum, in the discretion of the taxing officer, may be allowed, not exceeding..... 2.00

SALES BY AUCTIONEERS OR REAL REPRESENTATIVES IN PARTITION SUITS.

128. Drawing advertisements for the sale of real or personal estate, under the direction of the court, including all copies, except for printing $1.00
And for each folio over five, per folio..... .15
(To be increased in the discretion of the judge, to a sum not exceeding ten dollars, when special information has been procured for the purpose of sale.)
129. Copies for printing, per folio..... .10
130. Each necessary attendance on printer..... .25
131. Attending and making arrangements with auctioneer..... .50
132. Revising proof ..... .50
133. Fee on conducting sale when held where solicitor resides 3.00
134. If solicitor is engaged for more than three hours, for every hour beyond that time..... .75
135. Fee on conducting the same elsewhere, besides all necessary travelling and hotel expenses, when solicitor attends with the approval of the real representative previously given..... 5.00

MISCELLANEOUS.

136. Statement of issues in master's office when required by the master..... $1.00
137. For each folio over ten..... .20
138. When it has been satisfactorily proved that proceedings have been taken by solicitors out of court to expedite proceedings, save costs, or compromise actions, an allowance is to be made therefor in the discretion of the judge.
139. Drawing bill of costs as between party and party for taxation (including engrossing and copy for clerk), per folio..... .20
140. Copy per folio, to serve..... .10
141. For maps and plans necessary for and used at the trial, a reasonable sum in the discretion of the taxing officer (Con. Rule 1213).
142. Fee on motion of course, or on motion in matters not special 1.00
143. On special *ex parte* motion or application to the court (only one counsel fee to be taxed)..... 2.00
To be increased in the discretion of the judge who shall mark amount to be taxed on order of court, if any, before taxation, to..... 5.00
144. Fee on argument on supporting or opposing application to the court, or appeal..... 5.00
To be increased in the discretion of the judge to 10.00
145. On argument in appeals in the discretion of the taxing officer at Toronto, not exceeding $25. (Rules, 1 Jan., 1896, 1504.)
146. On consultations 2.00
147. Fee with brief, on assessment..... 6.00
148. Fee with brief at trial 10.00
To be increased by the judge in actions of a special or important nature falling within the

increased jurisdiction conferred by 59 V. c. 19, upon county courts (on notice to the opposite party) to a sum not exceeding..... $50.00

To be increased by the judge in actio f a special or important nature not fal within the increased jurisdiction aforesaid (on notice to the opposite party) to a sum not exceeding. 25.00

No charge to be made by either party in connection with such appl cation. (These two items will have to be recast, and will probably be amalgamated, when the tariff is again revised. In the meantime the larger fee may properly be allowed in actions within the increased jurisdiction under all statutes.)

149. On argument or examination in chambers in cases proper for the attendance of counsel and where counsel attends 1.00

150. On attendance on reference to clerk, when counsel necessary 3.00

To be increased in special and important matters requiring the attendance of counsel, in the discretion of the clerk, not exceeding..... 10.00

150. Fees on drawing and settling allegations in præcipe for revivor, in special cases, proper for opinion of counsel..... 1.00

To be increased in the discretion of county court clerk, to an amount not exceeding..... 2.00

152. On settling pleadings, interrogatories, special cases, issues or petitions, and advising on evidence in contested case. in the discretion of the clerk not exceeding..... 3.00

153. On settling the appeal case and reasons for or against appeal 2.00

To be increased in the discretion of the taxing officer at Toronto in special and important matters to a sum not exceeding..... 5.00

GENERAL.

154. On arbitrations, counsel fees may be allowed and taxed on the same scale and conditions, so far as possible, as those hereinbefore prescribed for counsel fees at trials.

155. In county court appeals, where the fees are not above provided for, the same fees and allowances shall be taxed as are allowed for similar services in the county court.

156. In taxing costs between solicitor and client, the clerk may allow for services rendered not provided for by this tariff, a reasonable compensation as far as practicable analogous to its provisions.

ONTARIO TARIFF B.

TARIFF OF DISBURSEMENTS.

Except where otherwise expressly provided by statute or rule of court, the following fees and allowances shall be taken and received by the officers and persons herein mentioned in civil actions in the county courts in lieu of all fees payable to those officers and persons under the tariffs heretofore in force in the said courts.

(*Inclusive of all fees expressly imposed by statute.*)

Official and Special Referees.

1. Filing and entering judgment or order in book...	$0.10
2. Every warrant or appointment.....	.10
3. Administering oath or taking affirmation.....	.20
4. Marking every exhibit	.10
5. Drawing depositions (in infancy matters only), reports, or orders, per folio, to include time occupied	.20
6. Fair copy, per folio (when necessary).....	.10
7. Copies of evidence supplied to parties or for the use of the judges—such sums as may be authorized under any order in council.	
8. Copies of evidence not provided for by any such order in council, and copies of papers given out when required, per folio.....	.10
9. Every attendance upon any proceeding or enlargement thereof or selling property.....	.50

10. For each additional hour	$0.50
11. Every certificate, if not longer than two folios	.20
12. Filing each paper or subsequent order	.10
13. Taxing costs, including attendance	.80
14. Making up and forwarding depositions, bills of costs and proceedings in office	.10
15. Every special attendance out of office within two miles, per hour occupied by reference or sale	.50
16. Every additional mile above two for travelling expenses	.10
17. Every order in chambers	.20
18. Searching files in office	.10

THE CLERKS OF THE COUNTY COURTS.

19. Every writ	.50
20. Every concurrent, alias, pluries or renewed writ	.40
21. Every appearance entered and filing memorandum thereof	.15
22. Every appearance, each defendant after the first	.10
23. Filing every affidavit, writ or other proceeding	.10
24. Amending every writ or other proceeding	.25
25. Upon payment of money into court where the amount is upwards of $10	.30
No sum to be payable in respect of payments into court upon mortgages or securities held by the accountant (Rule 18 Feb., 1892, 1271).	
26. Upon payment of money out of court where the amount is upwards of $10 (Rules of 18 Feb., 1892, 1271)	.30
27. Passing and certifying record	.50
28. Entering action for trial or assessment (including high court cases entered for trial at county court)	.50
Additional fee by statute in jury cases	1.50

29. On setting down on the paper for argument every special case	$0.20
30. Setting down a cause for any other purpose	.20
31. Subpœna, including filing præcipe	.20
32. Every reference, inquiry, examination, or other special matter for every meeting not exceeding one hour, not including the settlement of minutes of a judgment nor the allowance or disallowance of a bond	.75
33. Every reference, inquiry, examination or other special matter for every additional hour or less	.50
34. Fee on report made on such reference, etc.	1.00
35. Attending on opening commission	.50
36. Every certificate made evidence by law, or required by the practice, including any necessary search	.50
37. Every certificate for registration	.20
38. Entering certificate of title or conveyance, per folio	.10
39. Every ordinary order	.30
40. Every special order not exceeding six folios, per folio	.20
41. Every chamber order	.50
42. Every interlocutory judgment or judgment by default	.30
43. Every final judgment otherwise than judgment by default	.50
44. Taxing bill of costs, and giving allocatur or certificate	.80
45. Entering order, when necessary, per folio	.10
46. Taking account on præcipe judgment	.50
47. Exemplification or office or other copy of papers, or proceedings required to be given out, per folio, besides certificate and seal when required	.10

48. Examining and authenticating papers when copy prepared by solicitor—every three folios.....	$0.05
49. Every search, if within one year.....	.10
50. Every search of over one year and within two years.....	.10
51. Every search, if over two years, or a general search.....	.20
52. Every affidavit, affirmation, etc., taken before them.....	.20
53. Entering satisfaction on record, and filing satisfaction piece, including any necessary search.	.30
54. Every commission for the examination of witnesses.....	.50
55. Making up and forwarding papers, including bills of costs	.10
56. Entering exoneretur on bail piece.....	.20
57. For making the entry required in cognovit book.	.50
58. Every judgment pronounced, jury discharged, record withdrawn, or order of reference at the trial.....	.50
59. Drawing appointments by the judge.....	.25
60. Every appointment for taxation of costs or otherwise, made by clerk	.10
61. For every jury sworn	1.00
62. Every enlargement on application to the judge in chambers, including search, if marked by the clerk.....	.15

SPECIAL EXAMINER.

63. Every appointment	.10
64. Administering oath or taking affirmation.....	.20
65. Marking every exhibit	.20
66. Taking depositions, per hour.....	.75
67. Fair copy for solicitor, per folio (when required)	.10

68. Every attendance out of office when within two miles	$0.50
69. Every attendance over two miles out of office, extra per mile	.10
70. Every certificate	.25
71. Making up and forwarding answers, depositions, etc., including filing præcipe	.25
72. For every attendance upon an appointment when solicitor or witnesses do not attend and examiner not previously notified	.50

REAL REPRESENTATIVE.

73. The real representative acting under the Act respecting the partition and sale of real estate (R.S.O. 1887, c. 104), shall, in the case of proceedings being instituted in the county court, be entitled to demand and receive for all services performed by him under the said Act, the same fees as nearly as may be as are allowed to local masters or special examiners for similar services.

CRIER.

74. Calling each case, with or without a jury	.50
75. Swearing each witness or constable	.15

COMMISSIONERS.

76. For taking every affidavit	.20
77. For taking every recognizance of bail	.50
78. For marking every exhibit	.10

ALLOWANCE TO WITNESSES.

79. To witnesses residing within three miles of the court house, per diem	1.00

80. To witnesses residing over three miles from the court house $1.25

81. Barristers and solicitors, physicians and surgeons, other than parties to the cause, when called upon to give evidence in consequence of any professional service rendered by them, or to give professional opinion, per diem..... 4.00

82. 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 evidence depending upon their skill or judgment, per diem..... 4.00

83. 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.

84. The travelling expenses of witnesses over three miles shall be allowed, according to the sums reasonable and actually paid, but in no case shall exceed twenty cents per mile one way.

N.B.—In all applications and proceedings before the judges, not relating to suits instituted in any court of civil jurisdiction, there shall be payable to the clerks the same fees as in this table, so far as the same are applicable.

ONTARIO TARIFF C.

FEES OF SHERIFFS AND CORONERS IN CIVIL MATTERS.

Fees Payable to Sheriffs and Coroners.

GENERAL MATTERS.

1. Receiving, filing, entering and indorsing all writs, pleadings, rules, notices, or other papers, each	$0.10
2. Return of all process and writs, except subpœnas	.25
3. Return of pleadings, rules, notices, or other papers.	.15
4. Every search not being by a party to a cause or his solicitor	.30
5. Certificate of result of such search when required (a search for a writ against lands of a party shall include sales under writ against same party, and for the then last six months)	.75

6. Where a certificate respecting executions against lands is required, the sheriff, if so requested, is to include in one certificate any number of names in respect of which the certificate may be required, in the same matter or investigation, but shall be entitled to the same fees as if one certificate were given for each name, provided that no greater than four dollars shall be charged or collected in respect of such certificate. (50 V., s. 5.)

7. Every warrant to execute any process, mesne or final, directed to the sheriff, when given to a bailiff	$0.50
8. Every jury sworn or cause tried before a judge	.80
9. Every letter written (including copy) required by party or his solicitor respecting writs of process, when postage prepaid	.30
10. Drawing every affidavit when necessary and prepared by sheriff	.25

SERVICE OF PROCESS AND PAPERS.

11. Service of non-bailable process, each defendant, including affidavit of service	1.00
12. Serving subpœnas, orders, notices, or other papers (besides mileage)	.50
13. For each additional party served	25
14. Actual and necessary mileage from the court house to the place where service of any process, paper or proceeding is made, per mile	.13

ARREST AND ATTACHMENT.

15. Arrest when amount does not exceed $200	2.00
Arrest when amount does not exceed $400	4.00
Arrest when amount over $400	6 00
16. Bail bond or bond to the limits	1.00
17. Assignment of the same	.25
18. Mileage going to arrest when made, per mile	.13
Mileage conveying party arrested from place of arrest to gaol, per mile	.13
19. Bringing up prisoner on attachment or habeas corpus, besides travel at 20c. per mile	1.00
20. Certificate of surrender by sureties under Rule 1049	1.00

ABSCONDING DEBTORS.

21. Seizing estate and effects on attachment against an absconding debtor	$1.50
22. Valuators, each	1.00
23. Removing or retaining property, reasonable and necessary disbursements and allowances to be made by order of the court or judge.	
24. Drawing bond to secure goods taken under an attachment against an absconding debtor, if prepared by sheriff	1.50

REPLEVIN.

25. Precept or warrant to bailiff in replevin	.40
26. Drawing notice for service on defendant in replevin	.40
27. Delivering goods to the party obtaining the order of replevin	1.50
28. For writ *de retorno habendo*	.50
29. On replevin bond	2.00
30. Assignment	25
31. All necessary disbursements for the possession, care and removal of property taken in replevin.	

JURIES.

32. Notice of appointment for ballot of jury	.25
33. Notice to clerk of peace of such appointment	.25
34. Fee on balloting special jury	2.50
35. Fee on striking special jury	1.25
36. Serving each special juror (besides mileage at 13 cents per mile)	.25
37. Returning panel of special jurors	.50
38. Keeping and checking pay list of special jurors' attendance in each case	1.00

Sales, Poundage, Etc.

39. Poundage on executions and on attachments in the nature of executions, on the sum made (Exclusive of mileage for going to seize and sell and of all disbursements necessarily incurred in the care and removal of property.)	5%
40. Schedule taken on execution, attachment or other process, including copy to defendant, not exceeding five folios	$0.50
41. Each folio above five	.10
42. Drawing advertisements when required by law to be published in the official *Gazette* or other newspaper, or to be posted up in a court house, or other place, and transmitting same, in each suit	.75
43. Every necessary notice of sale of goods (not more than three) in each suit	.40
44. Every notice of postponement of sale, in each suit	.20
45. The sum actually disbursed for advertisements required by law to be inserted in the official *Gazette* or other newspaper.	

Sequestration.

46. Upon seizure of estate and effects under writ of sequestration	1.00
47. Schedule of goods taken in execution (including copy for defendant) if not exceeding five folios	.50
48. Each folio above five	.10
49. Removing or retaining property, reasonable and necessary disbursements and allowances to be made by order of the court or judge.	
50. (Poundage upon sequestration followed by sale and collection—as on other executions.)	

Writ of Possession.

51. Executing writ of possession and serving and executing writ of restitution besides mileage.. $2.00

Writ of Inquiry, Escheat, Etc.

52. Presiding or attendance on execution of writ of inquiry, or under any writ of escheat, or other writ of a like nature 4.00
53. Summoning each juror in such case..... .50
54. Bailiff's fees summoning jury, mileage per mile.. .13
55. Hire of room, if actually paid, not to exceed $2 per day.
56. Mileage from the court house to the place where writ executed, per mile ..... .13

Coroners.

57. The same fees shall be taxed and allowed to coroners for services rendered by them in the service, execution and return of process, as allowed to sheriffs for the same services above specified.

SESSIONS TARIFF

TARIFF PRESCRIBED BY SCHEDULE TO R.S.O. 1897, CHAPTER 101.

Clerks of the Peace and County Crown Attorneys.

1. Drawing precepts to summon the grand and petit juries, attending justices to sign, and transmitting to the sheriff	$6.00
2. Attending each general session for the first day.	6.00
3. For each additional day, not including time occupied by the county court	4.00
4. Making up records of each general sessions (when completed) including quarterly record of returns of convictions required by s. 6 R.S.O., c. 93	15.00
5. Notice of every appointment of a constable, under R.S.O., c. 99, or other officer appointed by the justices in session or by the chairman	.25
6. Drawing every special order of the court of general sessions necessary to be communicated to any party, and entering it on record	1.00
7. Notice of any order made by the general sessions, and letter transmitting same, when required to be notified to any person or party	.50
8. Copying orders of the court and causing the same to be published where it is requisite; for each order, exclusive of the expense of publication, per folio	.10
9. For issuing subpœna	.75
10. For every subpœna ticket, or copy of subpœna (when necessary and when not made out or charged for by the county Crown Attorney).	.25

11. For issuing bench warrant	$1.00
12. For drawing out and taking every recognizance of the peace, or for good behaviour if the person to be bound is in indigent circumstances	1.00
13. For drawing out and taking every recognizance to appear, whether of a prosecutor, prisoner, or defendant, witness or other person	.50
14. For calling parties on their recognizance and recording their non-appearance, for each person called	.25
15. For discharging a recognizance	.50
16. Drawing order of the sessions, or chairman to estreat and put in process (on the whole list)	1.00
17. Entering any order of the sessions, or of the chairman who presided at the sessions, to remit any estreat, and recording an entry on the same	.50
18. Preparing list each session; specifying names of persons making default under R.S.O. c. 106, s. 7.	.50
19. Entering and extracting upon a roll, in duplicate, the fines, issues, amerciaments, and forfeited recognizances recorded in each session, making oath to the same, and transmitting to the sheriff	2.00
20. Making out and delivering to the sheriff the writ of *fieri facias* and *capias* thereon	.75
21. Making out and certifying copy of roll and return of the sheriff and transmitting it to the provincial treasurer	1.00
22. Copies of depositions or examinations furnished to prisoners accused of felony, or their counsel, per folio of 100 words (when required by the accused, or his counsel, and ordered by the court. This fee is not to he charged when copies are furnished by the Crown Attorney)	.10

23. Receiving and filing each indictment when bill returned by the grand jury $0.50
24. Receiving and filing each presentment of the grand jury. ..... .50
25. For a copy of the presentment of the grand jury, forwarded by order of the court of general sessions to the government, or to the inspector of prisons, or to county council, per folio.... .10
26. Arraigning each prisoner, or defendant indicated ..... .75
27. Recording plea, or receiving and filing demurrer .50
28. Empanelling and swearing the grand jury in every case 1.00
29. Empanelling and swearing the petit jury in every case ..... .75
30. Swearing each witness to go before, or sworn before, the grand jury ..... .20
31. Charging the jury with prisoner, or defendant, upon each indictment 1.00
32. For filing each exhibit, list, return, or other paper connected with the proceedings in the court of general sessions where no charge therefor is specially provided ..... .10
33. Swearing each witness upon any trial or proceeding before the court ..... .20
34. Receiving and recording verdict of petit jury.. .50
35. Recording each judgment or sentence of the court upon a verdict of confession..... 1.00
36. Making out and delivering to the sheriff a calendar of the sentences at each court..... 1.50
37. Making out a certified copy or abstract of sentences sent with the prisoners to the penitentiary, central prison, or reformatory, after each session 1.00

38. Making up record of conviction or acquittal in any case where it may be necessary..... $1.00
39. Discharging prisoner by proclamation, each.... .50
40. Every allowance of *certiorari* to be paid by the party applying, except when he is in indigent circumstances 1.00
41. Furnishing to sheriff and each of the coroners revised lists of constables, when a revision has been made and when ordered to be done by the justices in general or adjourned sessions, for each list 1.00
42. Reading statute or public proclamation when required to be done by law..... .25
43. Making every copy or extract of a record or paper or document of any kind, required to be made by law, or by the order of the justices in sessions, or by the order of the government in any of its departments, or for the information and use of the government when required, and when no charge is fixed by law, per folio. .10
44. Causing public notice to be proclaimed in open court of the general sessions, of an intention to alter or rescind previous orders respecting the number and extent of any one or more of the division court limits under s. 15 of the Division Courts Act ..... .50
45. Drawing out such orders of sessions, for altering the limits of division courts, per folio.... .20
46. Making out and transmitting copies of such orders to the government, per folio..... .10
47. Making out and transmitting copies of such orders to each clerk of a division court affected by such alterations, per folio..... .10
48. Making up book of orders of sessions, declaring the limits of division courts 1.50

49. Making out and transmitting copies (with letter) to the clerk of each division court..... $1.00
50. Making out and transmitting a copy thereof to the government 1.00
51. For every necessary certificate, per folio..... .20
52. Making out and transmitting to the provincial treasurer a return or schedule of all convictions which have taken place before the court, each list including letter 1.00
53. Causing notice to be published of any special or adjourned sessions, when directed by the chairman or other two justices, so to do, besides amount paid for publication..... 1.00
54. Sending notice of any such sessions to the justices individually, when it is directed by the chairman or other two justices, for each notice .20
55. Attending each adjourned or special sessions and making up record of same, when completed... 5.00
56. Making out warrant of distress or commitment in any case where no fee is specially assigned therefor by any statute, or by this tariff..... 1.00
57. Swearing constable in open court..... .20
58. Receiving, filing and recording each oath of qualification of a justice of the peace..... .25
59. Every letter written, by direction of the justices in sessions, to the Government, or justices, or coroners, or constables or others, upon matters connected with the business of the court or the administration of justice..... .25
60. All necessary outlays for postage and publishing to be added in all cases.

The above tariff of fees and costs shall also be applicable in all proceedings where costs are chargeable or ordered to be paid by private parties, together with the following additional items:—

61. Certifying the result of each appeal heard and determined by the court to the convicting justice, or to any other party respecting the same under any statute..... $0.50
62. For every single search..... .20
63. For every general search..... .50
64. Receiving and filing notices of appeal and the appeal from any judgment or conviction by one or more justices where an appeal is given by law to the court of general sessions of the peace..... .50
65. When the appeal called, on reading the conviction, notice of appeal and recognizance.... .50
66. For all other services upon the trial of such appeal case, when tried by a jury, the same charges as hereinbefore specified in other trials.
67. Issuing process to enforce the order of the court in appeal case when required by law..... 1.00
68. For each copy of schedule of the times and places of holding the division courts, with the order of sessions, and forwarding the same to each division court clerk ..... .50
69. Drawing bill of costs, including taxation and filing the same where necessary to be made and filed, as in cases of assault, nuisance, or the like, and in appeals (to be paid by the party).. .50
70. For every certificate required of proof of a deed (to be paid by the party applying for same).. 1.00
71. Receiving and filing affidavit of bastardy (see Rev. Stat., c. 169, s. 3) (to be paid by the party producing it) ..... .25
72. Receiving and filing each tender for any public work, or supply, or printing, or other service .25
73. Making out a list of the several tenders on each occasion as they are opened, specifying the

names, prices and other particulars, and filing the same when required to be done by the justices $0.50

74. Drawing bonds or agreements for the delivery of articles, or for doing the work for the gaol or other county purposes, and attending execution when required by the justices..... 1.00

75. Receiving and filing accounts and demands, preferred against the county, numbering them, and submitting them for audit, and making out the cheques 4.00

76. Making out and delivering lists of orders on the treasurer, made at each audit 2.00

77. For every report or return required by statute, or by the Government, where no remuneration has been provided by this table or by statute... 1.00

78. Making out and transmitting a return to the Government of justices and coroners who have taken the oaths, when required to be done, for each return 1.00

79. Swearing each party to an affidavit, where no charge is elsewhere provided for it (to be paid out of the county funds, or by the party by whom the affidavit is sworn, according to the nature of the case)..... .20

80. Drawing certificate of approval by the justices in sessions, of sureties tendered by the sheriff (to be paid by the sheriff)..... .50

81. Administering oaths to any public officer, when authorized so to do (to be paid by officer)... .25

82. For distributing the statutes to the justices and county officers, or others, when directed by the statutes or the Government so to do, and taking receipts therefor, from each justice or officer.. .10

83. For accounting to the county member for copies of statutes not called for by the justices or county officers, and delivering the same to him, whenever such duty is required by statute or by the Government, and no other fee allowed.... $1.00

84. For receiving and filing voters' lists for an entire municipality under Rev. Stat., c. 7, ss. 20 and 21, each list ..... .25

85. For filing each list, return, or other paper, where no charge is specially provided for, except accounts and claims against the county, and papers connected with matters to be charged against private individuals (to be paid out of the county funds, or by the party for whom the service is rendered, according to the nature of the case) ..... .08

(*a*) When the offices of the clerk of the peace and county Crown Attorney are held by the same individual, and there is a similar or same fee provided for the same service to each officer, only one fee is to be charged or allowed.

(*b*) Items number from 1 to 67 of the foregoing tariff shall apply only to proceedings in the courts of general sessions of the peace, and shall not supersede any existing tariff of fees for services rendered by the clerk of the peace out of sessions.

For Services in County Judge's Criminal Court.

86. Attending and service in court and making all necessary entries, for each prisoner brought before the judge and not consenting to be tried, in all ..... .50

87. For attendance in court and services rendered at trial, making necessary record of proceedings, and all necessary entries including calendar of conviction, for each prisoner..... $2.00
88. Preparing judge's warrant to bring up the body of prisoner, and delivering the same to the sheriff, for each prisoner..... .50
89. Issuing writ of summons to witness when necessary..... .40
90. Copy of summons, each..... .20
91. Warrant of remand, when issued and delivered to sheriff ..... .50
92. For warrant to arrest, taking and estreating recognizances and proceedings to enforce same (the same fees as allowed for like services at the general sessions of the peace).

COUNTY CROWN ATTORNEY AT GENERAL SESSIONS.

In all criminal cases at the courts of general sessions of the peace, in which no costs have been ordered to be paid, or if ordered to be paid, cannot be made of the defendant, the county Crown Attorney shall be entitled to receive, for the services rendered by him in each such case, the following fees to be paid upon the certificate of the chairman, and to be taken in lieu of, and not in addition to, the fees which have been heretofore payable for services rendered in such cases, viz.:—

1. For receiving and examining all informations, depositions, documents, and papers connected with a criminal charge..... $2.00
2. For preparing draft and engrossed copy of every indictment or charge 2.00
3. For all business (except items 1 and 2 *supra*, and the following) in conducting the prosecution to judgment as well before as after trial..... 10.00

4. For every copy of subpœna $0.20

5. For every other service not specified above, and for reports on cases of unusual and important character, a *quantum meruit* to be determined by the Attorney-General, on a consideration of the particular circumstances.

(*a*) Where a number of charges are pending against the same person, and a conviction has been obtained on one or more indictments, fees and costs on the further proceedings upon the other charges are not to be made or allowed on taxation, unless in cases where the chairman would, in the event of additional convictions, impose a heavier sentence, or unless there are special circumstances which, in the opinion of the chairman, render it expedient that the other cases, or some of them, should be proceeded with and tried.

(*b*) In cases of indictment for the obstruction or the non-repair of a highway or bridge, or of indictment for nuisance (where there is a *bonâ fide* dispute as to boundary, or title, or claim of right, and where no present public inconvenience is being suffered from what is complained of), the County Crown Attorney shall not be entitled to charge costs to the public without the special sanction of the Attorney-General, but will collect his fees and costs from the parties only.

(*c*) When the offices of County Crown Attorney and clerk of the peace are held by the same individual, and a similar, or the same fee is provided for the same service to each officer, only one fee is to be charged or allowed.

SPECIAL FORMS

FORM 1.

Consent to trial in county court under section 21.

IN THE HIGH COURT OF JUSTICE.

BETWEEN:

A. B.,

Plaintiff,

and

C. D.

Defendant.

WE, the undersigned solicitors of the above named plaintiff and defendant do hereby agree that the county court of the county of shall have jurisdiction to try this action, under the provisions of section 21 of the County Courts Act, and that this action be transferred for trial to such county court.

WITNESS our hands this day of , 191 .

Plaintiff's Solicitor.

Defendant's Solicitor.

FORM 2.

Order for trial of high court action in county court under section 92 of the Judicature Act.

IN THE HIGH COURT OF JUSTICE.

(*Name of Judge.*)

In Chambers. (*Date.*)

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendant.

UPON the application of , and upon reading the affidavit of filed, and upon hearing the solicitor (*or* counsel) for .

1. IT IS ORDERED that this action be tried before the county court of .

2. AND IT IS FURTHER ORDERED that the costs of this application be .

FORM 3.

Order for the trial of a county court action at a sitting of the high court under section 93 of the Judicature Act.

IN THE HIGH COURT OF JUSTICE.

(*Name of Judge.*)

In Chambers. (*Date.*)

IN THE MATTER of an action pending in the county court of the county of .

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendant.

UPON the application of , and upon reading the affidavit of filed, and upon hearing the solicitor (*or* counsel) for the parties:

1. IT IS ORDERED that the above action and the issues therein be tried at the sittings of the high court to be held at .

2. AND IT IS FURTHER ORDERED that the costs of this application be .

FORM 4.

Appearance under section 22(2).

IN THE COUNTY COURT OF THE COUNTY OF .

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendant.

Enter an appearance for the defendant in this action.

The defendant disputes the jurisdiction of this court to try this action, on the ground that the amount claimed is beyond the jurisdiction of the court (*or*, "the value of the property in question is beyond the jurisdiction of the court," *or* "the amount or value of the subject-matter involved is beyond the jurisdiction of the court," *or* "the joint stock or capital of the partnership exceeds in amount or

value $2,000," *or* "the estate of the testator exceeds in value $2,000").

DATED at , this day of , 191 .

Solicitor for defendant.

The said defendant require a statement of claim to be delivered.

FORM 5.

Order transferring action under section 22(5).

IN THE HIGH COURT OF JUSTICE.

(*Name of Judge.*)

In Chambers. (*Date.*)

IN THE MATTER of a certain action pending in the county court of the county of .

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendant.

UPON the application of the defendant, and upon reading the affidavits of filed, and upon hearing the solicitors (*or* counsel) for the parties, and it appearing that the defendant, in his appearance, stated that he disputes the jurisdiction of the said county court, and that the plaintiff has not exercised the right to have the papers and proceedings in the action transmitted to the high court; (*ar,* "the defendant desiring to be allowed to question the jurisdiction of the said county court"):

1. IT IS ORDERED that this action and all proceedings therein be and the same are hereby transferred from the said county court to the high court.

2. AND IT IS FURTHER ORDERED that, if the plaintiff be awarded costs, they shall be taxed according to the scale of the high court.

3. AND IT IS FURTHER ORDERED that the costs of this application be .

FORM 6.

Order transferring action under section 23.

IN THE HIGH COURT OF JUSTICE.

(*Name of Judge.*)

In Chambers. (*Date.*)

IN THE MATTER of a certain action pending in the county court of the county of .

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendant.

UPON the application of the , and upon reading the affidavits of filed, and upon hearing the solicitors (*or* counsel) for the parties, and it appearing that the defendant has pleaded a set-off (*or* counterclaim) involving matter beyond the jurisdiction of the county court:

1. IT IS ORDERED that this action and all proceedings therein, including the said set-off (*or* counterclaim) be and the same are hereby transferred from the said county court to the high court.

2. AND IT IS FURTHER ORDERED that the costs of this application be .

FORM 7.

Order transferring action to another county court under section 25.

IN THE COUNTY COURT OF THE COUNTY OF .
(*Name of Judge.*)

In Chambers. (*Date.*)

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendant.

UPON the application of , and upon reading the affidavits of filed, and upon hearing the solicitors (*or* counsel) for the parties, and it appearing that this court has not cognizance of this action, but that the county court of the county of has jurisdiction to try the same:

1. IT IS ORDERED that this action and all proceedings therein be and the same are hereby transferred to the county court of the county of .

2. AND IT IS FURTHER ORDERED that the costs of this application be .

FORM 8.

Order transferring action under section 29.

IN THE HIGH COURT OF JUSTICE.
(*Name of Judge.*)

In Chambers. (*Date.*)

IN THE MATTER of a certain action pending in the county court of the county of .

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendant.

UPON the application of the , and upon reading the affidavits of filed, and upon hearing the solicitors (*or* counsel) for the parties, and it appearing that the debt or damages claimed amount to upwards of $100, and that the action is one fit to be tried in the high court;

1. IT IS ORDERED that this action and all proceedings therein be and the same are hereby transferred from the said county court to the high court.

2. AND IT IS FURTHER ORDERED that (*insert terms as to costs, security, etc., as ordered*).

3. AND IT IS FURTHER ORDERED that the costs of this application be .

FORM 9.

Order transferring action from high court to county court, under section 186(a) of the Judicature Act.

IN THE HIGH COURT OF JUSTICE.

(*Name of Judge.*)

In Chambers. (*Date.*)

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendant.

UPON the application of the , and upon reading the affidavits of filed, and upon hearing the solicitors

(*or* counsel) for the parties, and it appearing that this action is of the proper competency of a county (*or* district) court:

1. IT IS ORDERED that this action and all proceedings therein be, and the same are hereby transferred from the high court to the county (*or* district) court of the county (*or* district) of .

2. AND IT IS FURTHER ORDERED that (*insert here terms as to payment of additional costs incurred by defendant, etc., as ordered*).

3. AND IT IS FURTHER ORDERED that the costs of this application be .

FORM 10.

Order for transfer from division court to county court, under section 71 of Division Courts Act.

IN THE COUNTY COURT OF THE COUNTY OF .
(*Name of Judge.*)

In Chambers, (*Date.*)

IN THE MATTER of an action in the division court in the county of .

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendant.

UPON the application of the , and upon reading the affidavits of filed, and upon hearing the solicitors (*or* counsel) for the parties, and it appearing that the defence (*ar* counterclaim) pleaded in this action involves matter beyond the jurisdiction of the said division court, and that such defence (*ar* counterclaim) is not frivolous

or vexatious, and that the same is within the jurisdiction of the county court:

1. IT IS ORDERED that this action and all proceedings therein be, and the same are hereby, transferred from the said division court to this court.

2. AND IT IS FURTHER ORDERED (*insert here terms as to payment of additional costs, etc., as ordered*).

3. AND IT IS FURTHER ORDERED that the costs of this application be .

FORM 11.

Order for committal under section 35.

IN THE COUNTY COURT OF THE COUNTY OF .
(*Name of Judge.*) (*Date.*)
BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendant.

UPON motion, etc., by counsel for the , and upon reading, etc. (*here set out the evidence read, and praying the contempt alleged, and state the nature of the conduct constituting such contempt*), and this court being of opinion that the above named has, by his conduct as hereinbefore appears, been guilty of a contempt of this court, DOTH ORDER that the said do stand committed to the common gaol of the county of for his said contempt for the term of months, and that a warrant of attachment for the arrest of the said be forthwith issued.

AND THIS COURT DOTH FURTHER ORDER that the said do pay the costs of the of this application and of the said attachment.

FORM 12.

Warrant of committal under section 35.

IN THE COUNTY COURT OF THE COUNTY OF

(*Name of Judge.*) (*Date.*)

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendant.

To the sheriff of the county of , and to all constables and peace officers of the said county, and to the gaoler of the common gaol of the county of :

WHEREAS by an order bearing date the day of , 191 , it was ordered that the said should stand committed to prison for contempt of this court;

THESE ARE THEREFOR to require you forthwith to arrest and apprehend the said , and him safely convey and deliver to the gaoler of the common gaol of the county of ; and you, the said gaoler, to receive the said and him safely keep in the common gaol aforesaid until the further order of this court.

FORM 13.

Order of reference under section 36.

IN THE COUNTY COURT OF THE COUNTY OF

(*Name of Judge.*)

In Chambers. (*Date.*)

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendont.

UPON hearing the application of , and upon reading the affidavit of filed, and upon hearing the solicitor (*or* counsel) for :

1. IT IS ORDERED that the (*state whether all or some, and, if sa, which of the questians are to be tried*) in this action be tried by .

2. (*To be used in a case where it is not necessary ta reserve any questions as to costs ar 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 (*or* as the case may require).

3. AND IT IS FURTHER ORDERED that the costs of this application (*or*, of this action) be (*as may be ardered*).

FORM 14.

Certificate under section 42.

IN THE COUNTY COURT OF THE COUNTY OF .

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendont.

I, , judge of the county court of the county of , pursuant to section 42 of the County Courts Act and Consolidated Rule 793 of the rules of the supreme court of judicature, at the request of the and for the purpose of an appeal by him from the judgment pronounced by me herein, dated the day of , 191 , hereby certify that annexed hereto are the following papers and documents, viz.:

1. The original pleadings in this action.
2. The judgment appealed from dated , 191 .
3. My written opinion or reasons for pronouncing the said judgment.
4. The notes taken at the trial by a stenographer (*or* my notes) of the evidence, and of any objections and exceptions thereto and of the rejection of any evidence.
5. The exhibits put in at the trial.

which said papers and documents constitute, in my opinion, all the papers and documents in this action affecting the questions raised by the said appeal and necessary for the full understanding thereof.

DATED this day of , 191 .

Judge of the county court of the county of .

FORM 15.

Order staying proceedings under section 43.

IN THE COUNTY COURT OF THE COUNTY OF .

(*Name of Judge.*)

In Chambers. (*Date.*)

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendant.

UPON the application of the , and upon reading the affidavits of filed, and upon hearing the solicitors (*or* counsel) for the parties:

1. IT IS ORDERED that all further proceedings in this action under the judgment (*or* order) made herein on the day of , 191 , be stayed for the period of days to enable the above named to appeal from the said judgment (*or* order).

2. AND IT IS FURTHER ORDERED that the costs of this application be .

FORM 16.

Order extending time under section 44(2).

IN THE HIGH COURT OF JUSTICE.

(*Name of Judge.*)

In Chambers. (*Date.*)

IN THE MATTER of a certain action pending in the county court of the county of .

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendant.

UPON the application of th , and upon reading the affidavits of filed, and upon hearing the solicitors (*or* counsel) for the parties:

1. IT IS ORDERED that the time for setting down the appeal herein from the judgment (*or* order) pronounced herein on the day of , 191 , and for giving notice of the setting down of such appeal (*or* as the case may be) be extended for a period of days from this date.

2. AND IT IS FURTHER ORDERED that the certificate of the judge of the said county court issued herein on the day of , 191 , be sent back to the said judge for amendment as follows:

3. AND IT IS FURTHER ORDERED that the costs of this application be .

FORM 17.

Certificate on appeal under section 46(2).

IN THE HIGH COURT OF JUSTICE.

The Hon. The Chancellor. } day
The Hon. Mr. Justice } the
The Hon. Mr. Justice } day of , 191 .

BETWEEN:

A. B. (Respondent),

Plaintiff,

and

C. D. (Appellant),

Defendant.

THIS IS TO CERTIFY that the appeal of the above named appellant from the judgment of His Honour , judge of the county court of the county of , pronounced on the day of , having come on to be argued before this court on the day of , whereupon and upon hearing counsel as well for the appellant as the respondent, this court was pleased to direct that the matter

of the said appeal should stand over for judgment, and the same having come on this day for judgment:

IT IS ORDERED AND ADJUDGED that the said appeal should be and the same was allowed (*or* dismissed) with costs to be paid by the respondent (*or* appellant) to the appellant (*or* respondent) forthwith after taxation thereof.

(*Where the appeal is allowed.*) AND IT WAS FURTHER ORDERED AND ADJUDGED that (*stating the judgment pronounced in the action in lieu of the judgment which is reversed*).

FORM 18.

Order for prohibition.

IN THE HIGH COURT OF JUSTICE.

(*Name of Judge.*)

In Chambers. (*Date.*)

IN THE MATTER of a certain action pending in the county court of the county of .

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendant.

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*):

1. IT IS ORDERED that the said be and he is hereby

prohibited from further proceeding in the said (*action*) in the said court.

FORM 19.

Order in nature of mandamus.

IN THE HIGH COURT OF JUSTICE.

(*Name of Judge.*)

In Chambers. (*Date.*)

IN THE MATTER of a certain action pending in the county court of the county of .

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendant.

UPON the application of , and upon reading the affidavits of filed, and upon hearing the solicitor (*or* counsel) for :

1. IT IS ORDERED that the the judge of the county court of the county of , or other judge presiding in the said court, do try the above mentioned action now pending in the said court, and do adjudicate upon the same.

2. AND IT IS FURTHER ORDERED that the costs of this application be (*as may be ordered*).

FORM 20.

Order changing place of trial.

IN THE COUNTY COURT OF THE COUNTY OF .

The Master in Chambers. (*or* His Honour Judge , In Chambers.) } day, the day of .

BETWEEN:

A. B.,

Plaintiff,

and

C. D.,

Defendant.

UPON the application of the defendant, and upon reading the affidavits of filed, and upon hearing the solicitors (*or* counsel) for the parties:

1. IT IS ORDERED that the place of trial of this action be changed from the of to the of .

2. AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause (*or* costs in the cause to the defendant, *or*, be paid by the plaintiff to the defendant in any event in this cause, *or as may be ordered*).

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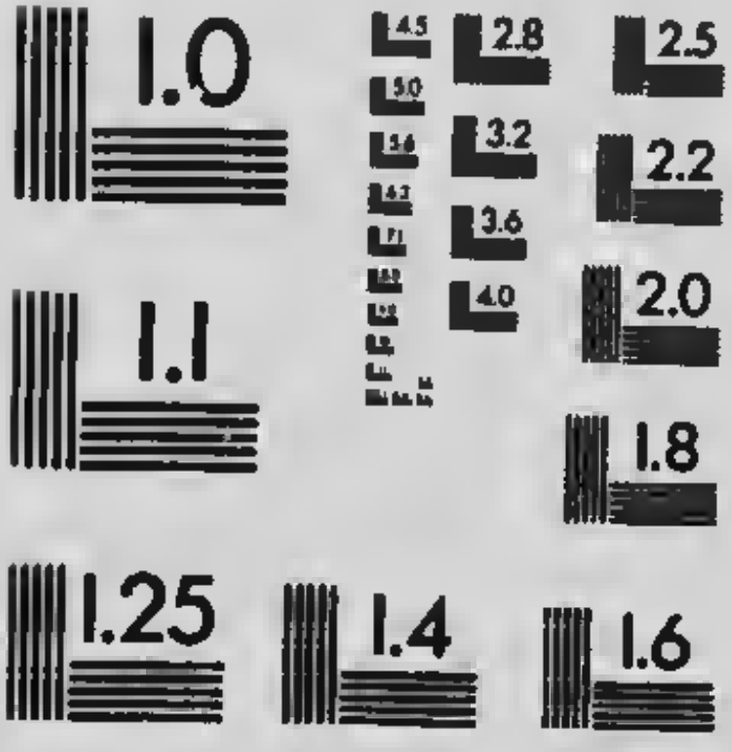

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