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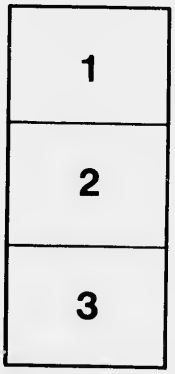

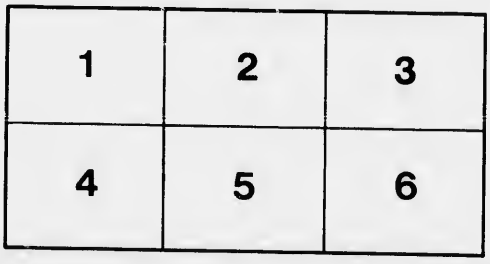

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THE PRACTICE

OF THE

EXCHEQUER COURT

OF

CANADA

I hold every man a debtor to his profession.

—*Bacon.*

BY

LOUIS ARTHUR AUDETTE, LL.B.,

ADVOCATE OF THE PROVINCE OF QUEBEC,

AND

REGISTRAR OF THE EXCHEQUER COURT OF CANADA.

OTTAWA

PRINTED AT THE OFFICE OF THOBURN & CO., 36 ELGIN STREET,

1895.

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Judge of the Exchequer Court of Canada.

THE HONOURABLE GEO. W. BURBIDGE.

Appointed on the 1st day of October, 1887.

Local Judges in Admiralty of the Exchequer Court of Canada.

The Honourable George Irvine, Q.C.,	Quebec	District.
James McDonald, C.J.S.C.,	N. S.	"
William Henry Tuck, J.S.C.,	N. B.	"
William W. Sullivan, C.J.S.C.,	P. E. I.	"
Sir Matthew B. Begbie, C.J.S.C., (Died 11th June, 1894.)	B. C.	"
Theodore Davie, C.J.S.C., Appointed 25th March, 1895.	B. C.	"
Joseph E. McDougall, J.Y.C.C.,	Toronto	"

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Louis Arthur Audette, Esq. LL.B., Registrar.
Appointed 8th November, 1887.

Charles Morse, Esq., LL.B., Reporter.
Appointed 1st July, 1888.

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Sir Charles Hibbert Tupper, K.C.M.G., LL.B., Q.C.

Deputy Minister of Justice.

E. L. Newcombe, Esq., Q.C.

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ADDENDA ET CORRIGENDA.

Errors in cases cited are corrected in Table of Cases Cited.
Page 61, line 35, for 3 Ex. C.R., read 4 Ex. C.R.
Page 271, line 32, for *facie*, read *facie*.
Page 276, line 37, after words "*set aside or very*" add "*any.*"

PREFACE.

I have, in this work, endeavoured to measure and follow the pace of judicial work in the Exchequer Court from its early origin in England down to the present day in Canada, and have made such notes upon the jurisdiction and practice of the Court as I have thought might be of use to the practitioner.

The preparation of the work has been undertaken with the view of collecting in one book and in a convenient shape such parts of the most important Acts of Parliament as have an immediate bearing upon the jurisdiction and practice of the Court, and also all the rules and orders of the Exchequer Court, which rules and orders are now scattered through a large number of books.

By the last General Rules and Orders, published on the 1st day of May, 1895, quite a number of new rules have been put into force and a great many amendments have been made to the rules heretofore in force. All these changes have been carefully noted.

Thinking this book would not be complete unless it contained all the Rules and Orders, as well on the Revenue and Common Law side of the Court as on the Admiralty side, I have deemed it advisable to print separately, in an Appendix, at the end of this volume, the Rules and Orders governing the practice and procedure in Admiralty cases in the Exchequer Court of Canada.

The great number of inquiries received by me since 1887, as Registrar of the Court, from members of the profession in all parts of Canada, on the subject of the practice of the Exchequer Court, leads me to hope that my book, notwithstanding the crudities and imperfections of which I am only too well aware, may be received with some measure of favour by those members of the Bar who have occasion to practice before the Exchequer Court, and that its usefulness will justify its publication.

While I do not anticipate that the financial return from this publication will be in any way remunerative, yet should it prove to be a good working tool for the profession, I shall feel amply repaid for the expense and labour involved in the enterprise.

ABBREVIATIONS.

App. Cas. ..... Appeal Cases.
Art. ..... Article.
B. & S. ..... Best & Smith.
B. C. L. R. ..... British Columbia Law Reports.
Beav. ..... Beaven.
Bk. Com. ; Bl. Com. ..... Bla. Com. ..... Black. Com. ..... Blackstone's Commentaries.
Bro. Ab. ..... Brooke's Abridgment.
C. L. J. ..... Canada Law Journal.
Can. S. C. R. ..... Reports of the Supreme Court of Canada.
Cas. Dig. ..... Cassels' Digest Supreme Court of Canada.
Cassels' D. S. C. C. ..... Cassels' Digest Supreme Court of Canada.
Cassels' Practice S. C. C. ..... Cassels' Practice Supreme Court of Canada.
C. C. L. C. ..... Civil Code, Lower Canada.
C. C. P. L. C. ..... Code Civil Procedure, Lower Canada.
C. B. N. S. ..... Common Bench, New Series.
C. P. D. ..... Common Pleas Division.
Ch. & ch. ..... Chancery and chapter.
Ch. D. ..... Chancery Division.
Com. ..... Comyn's Reports or Digest.
Con. S. N. B. ..... Consolidated Statute of New Brunswick.
Coop. temp. Brough. ..... Cooper's cases Tempore Brougham.
E. O. ..... English Order. This refers to the Orders made in pursuance of the Supreme Court of Judicature, 1875, to regulate the practice in the High Court of Justice in England. See Wilson's Judicature Acts.
Ex. C. R. ..... Exchequer Court Reports of Canada.
Gen. Rules (Ont.) Tr.T., 1856. Refers to the General Rules of Court made in Trinity Term, 1856, for regulating the practice of the Courts of Queen's Bench and Common Pleas of Ontario. These Rules will be found in Harrison's Common Law Procedure Acts.
Gneist Hist. Eng. Const. ..... Gneist's History of the English Constitution.
Gneist Hist. Eng. Parl. ..... Gneist's History of English Parliaments.
Han. ..... Hansard.
How. St. Tr. ..... Howell's State Trials.
Inst. ..... Coke's Institutes.
J. ..... Judge.
L. C. J. ..... Lower Canada Jurist.
L. J. Ch. ..... Law Journal Chancery.
L. J. C. P. ..... Law Journal Common Pleas.
L. J. N. S. ..... Law Journal, New Series.
L. R. App. Cas. ..... Law Reports, Appeal Cases.
L. R. H. L. ..... Law Reports, House of Lords.
L. R. P. D. ..... Law Reports, Probate Division.
M. & G. ..... Manning & Granger's C. P. Reports.
M. & W. ..... Meeson & Welsby's Exchequer Reports.

M. L. R. S. C. .....Montreal Law Reports, Superior Court.
M. L. R. Q. B. .....Montreal Law Reports, Queen's Bench.
Murdoch's Ep. N. S. L. .....Murdoch's Epitome of Nova Scotia Law.
N. Sc. Rep. .....Nova Scotia Reports.
Old. .....Oldright's N. S. Reports.
Ont. App. R. .....Ontario Appeal Reports.
Ont. P. R. .....Ontario Practice Reports.
O. R. .....Ontario Reports.
P. & p. .....Page.
Q. .....Quebec.
Q. B. D. .....Queen's Bench Division.
Rot. Parl. .....Rotulæ Parliamentaria.
R. S. C. .....Revised Statutes of Canada.
R. S. Q. .....Revised Statutes of Quebec.
R. S. U. S. .....Revised Statutes United States.
Ryley Plac. Parl. .....Ryley's Placita Parliamentaria.
Sch. .....Schedule.
Sec. .....Section.
Sim. .....Simons.
Skin. .....Skinner.
Spence's Eq. Juris. .....Spence's Equity Jurisprudence.
Ss. .....Sections.
Staun. Prær. .....Staundeforde's Prærogatives.
Steph. Com. .....Stephen's Commentaries.
St. T. .....State Trials, (Howell's Ed.)
Tasw. Lang. Const. Hist. .....Taswell Langmead's Eng. Constitutional Hist.
Taylor's C. Chy. O. .....Refers to Taylor's Consolidated Chancery Orders, being the Orders regulating the practice of the Court of Chancery in Ontario.
U. C. Q. C. (O.S.) .....Upper Canada, Queen's Bench, Old Series.
U. K. .....United Kingdom of great Britain & Ireland.
U. S. R. .....United States Reports.
W. R. .....Weekly Reporter.
Y. B. .....Year Book.

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INTRODUCTION.

The Exchequer Court of Canada in respect of its jurisdiction in revenue cases has a historic lineage.

The Exchequer in England.

The date of the origin of the Exchequer in England cannot be precisely determined. In the *Dialogus de Scaccario*, (1) the earliest work especially devoted to the history of this court extant, we are told that "the institution of the Exchequer is confirmed as well by its authority, as also by the authority of the great men that sit there. For it is said to have been erected by King William at the time of the Conquest of this Realm, its model being taken from the transmarine Exchequer; but they (the Exchequer of England and that of Normandy) differ from one another in several and very material things. Again, there are some who think there was an Exchequer under the Anglo Saxon Kings." This, however, the learned author of the *Dialogus* does not think probable, because, as he says, "in Domesday Book (which contains an exact description of the lands of the whole Realm, and mentions the value of all men's lands as well of the time of King Edward as also of King William, under whom it was written) there is no mention at all made of the "*album firmae*." (2) This conclusion is shown to be erroneous by Stapleton in his preface to the *Rolls of the Norman Exchequer*. Mr. Stapleton establishes, in an argument which is as unanswerable as it is exhaustive, that the "blanch-ferm" was purely English in its origin and character, and was unknown to the monetary system of the Normans at the time of the Conquest. But apart from this argument, the omission of any reference to the "blanch-ferm" in Domesday does not by any means prove its Norman origin, for many matters relating to the fiscal economy of the country of greater importance than this have escaped notice therein. Moreover, satisfactory authority is not wanting to show that there existed a central department of finance in England before the Conquest, from which the constitution and the procedure of the Exchequer, as it subsequently appears in history, were derived. (*Cf. Stubb's Const. Hist. of England*, 1. *p.* 408.) It is strange

(1) This work is erroneously ascribed by Madox and earlier writers to Gervase of Tilbury, an English Latin writer of some prominence in the 13th century, but it is now recognized as the production of Richard Fitzneal, Bishop of London. It was apparently commenced in 1176, but it refers to events which transpired as late as 1178.

(2) This was a money rent paid by the sheriffs into the royal Exchequer. The ferm was said to be blanched when it had been tested by fire, weighed, and brought to the standard of the royal mint at Winchester. Twice a year the sheriffs had to appear at the Exchequer and settle accounts in respect of their ferms.

that so painstaking a writer as Gneist (*Vide Hist. Eng. Const.* I. pp. 35, 137-139-144) should be misled into believing the Exchequer to be a bodily importation from Normandy in the face of evidence to the contrary so easily accessible. However, he is not the only German student of the English Constitution that has fallen into this error. Brunner in his *Schwurgericht* (p. 150) gives expression to the same view.

But as the author of the *Dialogus* quaintly observes, "at "what time soever the Exchequer began, it is certain that it is "founded on so great an authority that no man ought to break "the statutes (*sic*) of the Exchequer, or to be so hardy as to op- "pose them. For this the Exchequer has in common with the "King's Court (Curia Regis) (wherein the King personally sits in "judgment) that it is not lawful for any man to contradict what "is recorded or adjudged there."

This reference to the *Curia Regis* is instructive, for in its rudimentary stages the Exchequer was really nothing more than a branch of the great Council of the Nation. It seems to have been a sort of committee of that general council or court having special jurisdiction in the affairs of the public revenue. This phase in the history of the Exchequer becomes apparent in the reign of Henry I. Then, for the first time, the members of this committee were called *Barones Scaccarii*, and the committee itself *Curia Regis ad Scaccarium*, a name derived from the fact that the accounts of the King's debtors were taken at a table covered with a chequered cloth, which suggested a game at chess between the receiver and the payer. (*Cf. Taswell Lang. Const. Hist.* 160.) Blackstone, speaking of the etymology of the name 'Exchequer,' says:—"It seems to be derived from the low Latin "word *scaccarium* or *scaccus*, a chequered board or cloth, resem- "bling a chess-board, which covered the table on which, when "certain of the King's accounts were made up, the sums were "marked and scored with counters." (Bl. Com. III. 44). Basnage, in his *Customary of Normandy*, derived the name 'Exchequer' from the German word *Skeckan*, which means to send, because the court was composed of *de Missis Dominis*, or of such great Lords as were particularly sent for, to hold Court with the Seneehal or Steward on any occasion. Chief Baron Gilbert, in his *Treatise on the Court of Exchequer* (page 2), says, "that "the more common derivation of the word 'Exchequer' is from "a chequered board. They called the board on which they played "at chess a chequer, because in that game they give cheques; "and the Court was so called because they laid a cloth of that "kind upon the table upon which the accountants told out the "King's moneys, and set forth their account in the same artificial "manner as in the Cofferer's account was done." (See also Price's *Law of the Exchequer*, p. 4).

Sir W. Anson, in his *Law and Custom of the Constitution*, at p. 412, says:—"The function of the Exchequer had always "involved some enquiries of a judicial character, and while it be- "came a department distinct from others, it did not cease to be a "court for revenue purposes."

Down to the reign of King John the *Curia Regis* continued

to be the one Supreme Court of the Realm, of which some of the judges, selected from time to time out of the whole body, held a continuous session at the Exchequer for the determination of all business appertaining to the revenue; but shortly after the granting of *Magna Charta*, this great court was permanently divided into three committees or courts, i.e.:—(1), the Exchequer, having exclusive cognizance of fiscal matters and of the management of the King's revenue; (2), the Common Pleas, where civil disputes between subject and subject were to be adjudged; and (3), the King's Bench, which had jurisdiction under the head of *placita coram Rege*, of all suits savouring of a criminal nature and matters cognate thereto. It is interesting to note how these several jurisdictions were enlarged by reciprocal encroachments of the three courts upon each other, due to the litigiousness (1) of the people (which seemed to increase in an equal ratio with their civilization) and the wonderful development of legal ingenuity at the time.

The jurisdiction of the ancient Court of Exchequer is thus defined in the *Mirror of Justice* (temp. Edw. II.) cap. 1, sec. 14: "The Exchequer is only ordained for the King's profit, to hear "and determine torts done to the King and his Crown, in right "of his fiefs and franchises, and the accounts of bailiffs, and of "the receivers of the King's money, and the administrators of his "goods, by the view of a Sovereign who is the Treasurer of "England."

In speaking of this definition of the court, Lord Keeper Somers, in his celebrated argument in the *Banker's Case* (14 How. St. Tr. 47), says:—"These words of the *Mirror* contain "a short but effectual description of the Court of Exchequer, and "my Lord Chief Justice Coke comments upon and expounds "them in their full extent; nothing falls from him as if this ac-"count were defective, or did include only one part of the busi-"ness of the court."

For a period after the segregation of the courts in the manner mentioned, the Great Justiciar was still the head of the whole forensic system; but after the fall of the celebrated Hubert de Burgh, the office became extinct, and each of the three courts acquired a chief or presiding judge of its own. When the office of the Chancellor of the Exchequer was created in the reign of Henry III. the Exchequer was first enabled to enlarge its jurisdiction. The Lord Treasurer, the Chancellor of the Exchequer, the Chief Baron and three puisne Barons formed an equity branch of the court, while the common law branch was administered by the Barons only. (*Vide Black. Com.* Bk. III., p. 44.) In this way the Exchequer was the first court to be endowed with equity jurisdiction in England—the Court of Chancery not being formed as a distinct court until the reign of Richard II. (See *Spence's Eq. Jur.* i, 345; and *Kerly's Hist. Eq.* 5.) This extension of jurisdiction was, of course, solely attributable to the Crown, but it was reserved for the finesse of the lawyers to effect-

(1) See Jessop's *Coming of the Friars*; also Pike's *Introduction to the Year Books of Edward III.*

nally circumvent the efforts that had been put forth by the reformers of the time to specialize the work of the three courts. As pointed out, the business of the Exchequer on its common law side was originally confined to matters connected with the royal revenue; but after the erection of the court into a separate tribunal, practitioners at that bar conceived that it would be a very convenient thing to transact in the Exchequer business properly coming within the cognizance of the other courts. To accomplish this they devised a writ of *quo minus*, wherein it was alleged that the plaintiff being a debtor of the King, was, by reason of the wrong done to him by the defendant, deprived of the means of satisfying the debt due by him to the Crown, and was obliged to invoke the aid of the Court to recover the same. Thus they succeeded in giving that part of the Exchequer, which was presided over by the Barons, concurrent civil jurisdiction, both in respect of common law and equity, with the other courts between subject and subject, an accession of business which its judges were by no means averse to, as they thereby received a substantial increase in their fees—the system then in vogue for the remuneration of the judiciary.

Until the reign of Elizabeth, the Barons of the Exchequer occupied a much lower status than the judges of the other courts. Indeed they were not necessarily chosen from the legal profession. The Statute of *Nisi Prius*, 14 Edward III, enacted that, "if it happen that none of the justices of the one bench nor of "the other (Queen's Bench and Common Pleas) come into the "county, then the *Nisi Prius* shall be granted before the Chief "Baron of the Exchequer, *if he be a man of the law*." But owing to the great increase of litigation brought about by the fiction of *quo minus*, it was found necessary to appoint only lawyers to the Exchequer bench. After the twenty-first year of Queen Elizabeth's reign, the Exchequer judges were chosen from the ranks of the sergeants-at-law. They were styled "Barons of the Coif." As these Barons had not, as their predecessors had, served an apprenticeship, so to speak, in the Exchequer, it became necessary to appoint an officer to the court who was able to discharge its purely fiscal business. He was called the *Cursitor Baron*. He had no judicial authority in the Exchequer as a court of law, and his principal function was to inform the Barons of the Coif of the procedure of the court in matters touching the King's prerogative. This office was abolished in 1856. (See Foss's *Judges of England*, Pref. p. viii. and Price's *Law of the Exchequer* p. 78.)

Speaking of the character of the Exchequer and its judiciary in the reign of Edward I. and Edward II., Dr. Gneist (*Const. Hist. Eng.* 2nd Ed. Vol. 1, p. 387), says:—"Its members were usually "appointed from among the higher officials of the Exchequer de"partment from whom it was difficult to eliminate the financial "spirit. Hence it is the more readily conceivable that the reten"tion of the old method of assigning ordinary pleas to the Exchequer now led to loud complaints. In 5 Ed. I., a royal writ was ad"dressed to the Barons, which in general terms prohibits them "from dealing with *communia placita*, as being contrary to the "letter of Magna Charta. This was repeated in the statute of

"Rutland (10 Edw. I.), with the remark that in this manner the "King's suits as well as those of the people were unduly pro- "tracted. As, however, (probably in consequence of the interest "in the court fees) the rule was often evaded, it was again re- "peated in the *Articuli super Chartas*, 28 Edw. I., and then once "more in 5 Edw. II. In later times the rule was again evaded by "fictions."

Sir Wm. Anson, in his work on the *Law and Custom of the Exchequer*, at p. 413, makes also the following observation with reference to the usurpation of jurisdiction by the Exchequer Court during the period under consideration:—"It was useless to "pass a statute in 1300 forbidding the Exchequer to deal with "common pleas, except in so far as they might touch the King or "ministers of the Exchequer. Fictions were introduced into the "pleadings of each court by which common pleas were brought "within their cognizance, and while each retained its special bus- "iness, and some matters remained special to the Common Bench, "all three courts became, in the fourteenth century, for most "purposes, accessible to all."

But Virgil's apothegm—

> Muta dies varinsque labor mutabilis ævi
> Retulit in melius,

applies with especial significance to jurisprudence, and among the earliest achievements in the direction of law reform which mark the present century was the passage of 2 Wm. IV. c. 39, which, amongst other things, abolished the fictitious proceeding by writ of *quo minus* in the Exchequer and established a uniformity of process in personal actions in all the courts of law at Westminster.

Equity business was never satisfactorily discharged in the Exchequer; the procedure was never systematized, and apart from this *crux* to the exact mind of the Chancery lawyer, the Equity side of the Exchequer was so constituted as to render possible the anomaly of a layman deciding the law where judges disagreed. This actually happened in the case of *Naish v. The East Company* (2 Com. 463). This case was tried on the Equity side of the Exchequer in Michaelmas term, 1735, when Sir Robert Walpole was Chancellor of the Exchequer. The court, consisting of Reynolds, C. B., and Carter, Comyns and Thompson, B.B., were divided in their opinions upon the issues, and it became necessary for the Chancellor of the Exchequer to exercise his judicial functions in the matter. Sir Robert was not a lawyer, and possibly no rival of King Solomon in intuitive legal wisdom, but, happily, his logical mind and sound common sense enabled him to determine the case in a way that gave satisfaction to all parties concerned. This was the last occasion when the Chancellor of the Exchequer was called upon to discharge his duties as an Equity judge. In 1841, the ancient equity jurisdiction of the Exchequer between subject and subject, which, as Mr. Kerly says in his recently published *History of Equity* (p. 277), "had be-

"come very ineffective," was transferred bodily to the Court of Chancery by 5 Vict. c. 5.*

It would not be proper to omit brief mention of the Court of Exchequer Chamber in this historical sketch. This court, according to Lord Coke (*Inst.* IV., 110, 119), was originally a tribunal composed of all the judges of England assembled for the decision of matters of law. Lord Campbell (*Lives of Chancellors*, i., 10) says that the Lord Chancellor, in the early days of the court's existence, adjourned cases of great importance before him into the Exchequer Chamber in order to avail himself of the opinions of the whole bench of judges. The Exchequer Chamber was thus, at the start, more of an advisory board for the Lord Chancellor than a court properly so called; but by 31 Edw. I., c. 12, its forensic character was established by making it a court of review for cases decided on the common law side of the Exchequer. Its bench was composed of the judges of the Queen's Bench and Common Pleas. By 27 Eliz., c. 8, it was enacted that the judges of the Common Pleas and Exchequer should form a second Court of Exchequer Chamber for review of a certain class of cases decided in the Queen's Bench. The appellate jurisdiction of the court was further augmented by 11 Geo. IV. and 1 Will. IV., c. 70, sec. 8, which constituted it a court of review for all proceedings in error from the three courts of common law, the judges of two of the courts hearing the appeals coming from the third. The latter enactment also provided that the court should have jurisdiction to review criminal cases on writ of error from the Queen's Bench.

The Court of Exchequer Chamber was abolished and its jurisdiction transferred to the Court of Appeal by the Judicature Act of 1873.

In the year 1842 certain offices on the revenue side of the Exchequer, the history of which is now only of interest to the antiquarian (such as those of the sworn and side clerks, the Bag-bearer, etc.), were abolished and the duties thereof transferred to the Queen's Remembrancer in the Exchequer.

By Rule 245 of the Rules of the Exchequer Court of Can-

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*See Chief Baron Pollock's views upon the effect of this enactment in abolishing the court's equity jurisdiction in purely revenue cases, in *Atty.-Gen. v. Hatting*, 15 M. & W., 687. See also Lord Langdale's opinion upon the same question in *Atty.-Gen. v. London*, L. J. N. S. 14 Eq. 305; Lord Cottenham's opinion in the same case in 1 H. L., 461; and the consideration given to the question by Vice-Chancellor Giffard in the *Atty.-Gen. v. Edmunds* in L. R. 6 Eq., 389. See also Chief Baron Kelly's opinion (in which Huddleston, B. concurred) in *Atty.-Gen. v. Constable*, L. R. 4 Ex., Div. 172. For a Canadian Judge's view of the effect of this statute, see the judgment of Chancellor Vankoughnet in *Miller v. Atty.-Gen.*, 9 Grant, 558.

It would appear to be a fair inference to draw from the weight of judicial opinion that the effect of the Act was to transfer from the Court of Exchequer to the Court of Chancery the equity jurisdiction of the former in respect of cases arising between subject and subject only and not in respect of revenue cases.

ada it is provided that, "the Registrar shall have power in revenue "cases to do any ministerial act which the Queen's Remembrancer "in Her Majesty's late Court of Exchequer in England could "have done in the same class of cases," and therefore, a brief account of the character and duties of the Remembrancer's office may be useful here.

As pointed out by Madox (*History of the Exchequer*, Vol. II, pp. 62, 114 and 264) there were originally two Remembrancers in the Exchequer, one called the King's Remembrancer, and the other styled the Treasurer's Remembrancer. Of the King's Remembrancer it may be said generally that he was an officer charged with the duty of reminding the lord-treasurer and judges of the Exchequer of such matters as came within the scope of the business of the revenue side of the court which demanded their attention for the benefit of the King. The functions of the Treasurer's Remembrancer were of a similar character, and while the two offices were quite distinct, the difference between their respective duties consisted in distribution rather than in kind. The records kept by the two Remembrancers were called *memoranda* or remembrances, and a remembrance was, "anciently wont to be made for every year in each of the offices," (Madox, ii, p. 114). The Treasurer's Remembrancer's record, or Bundle, as it was styled in the terminology of the Exchequer, comprised process against sheriffs, escheators, receivers, and bailiffs for their accounts, and also entries of *fieri facias* and extent for debts due to the King. The King's Remembrancer's record was made up of entries of all recognizances taken before the Barons of the Exchequer for debts due to the King, of recognizances for appearances in revenue suits and for observing orders of the court, and of all process against collectors of Customs and collectors of royal subsidies, etc.

So far, we have been discussing the functions of the two Remembrancers in matters touching the Royal revenue only, but when we come to consider suits between subject and subject we find there was a more marked distinction between the duties of these officers. The Treasurer's Remembrancer's office was originally the common law side of the court in such cases, while the King's Remembrancer's office was the department where the ministerial proceedings of the equity side of the court in such cases were carried on. (Cf. Price's *Law of the Exchequer*, p. 272). In the progress of time the machinery of the two departments became too unwieldly for them to be kept distinct, and the office of Treasurer's Remembrancer was abolished and its functions and duties consolidated with those of the King's Remembrancer.

As the business of the Exchequer waxed in volume and complexity, it was found necessary from time to time to re-adjust the powers of the Remembrancer. By certain rules and orders made about the year 1687 by the Barons of the Exchequer for regulating the practice in the King's Remembrancer's office, the Remembrancer was given power to tax costs, to decide upon irregularities in procedure after hearing the attorneys on both sides, with right of appeal from such decision to the court, and to attend the sittings of the court for the purpose of giving informa-

tion touching any proceedings therein that might be required. (See *Manning's Exch. Pract.*, 2nd ed., p. 310.) Under the provisions of 7 Anne, c. 20, the Queen's Remembrancer was made, in common with certain officers of the courts of Chancery, Queen's Bench and Common Pleas, a Registrar of Deeds and Wills within the County of Middlesex. By 22 and 23 Vict. c. 21, this function of the Remembrancer was abolished. By the last mentioned Act, provision was made for the office of Queen's Remembrancer being held by one of the Masters of the Court of Exchequer on its revenue side, who was empowered to discharge the duties of both offices. Finally, the Queen's Remembrancer, his historic office and dignity, disappeared under the sweeping reforms introduced in England in respect to legal offices by *The Judicature (Officers') Act of* 1879. By this Act the office of Queen's Remembrancer was, amongst others, concentrated in and amalgamated with the Central Office of the Supreme Court of Judicature, established under such Act. (See *Wilson's Jud. Acts*, 6th Ed., pp. 95, 96.)

The English Court of Exchequer clung most tenaciously to its ancient procedure until well into the present century. So late as 1830, Price, in his *Law of the Exchequer*, (p. IV.), says:—

"It is because the modern practice of the Court of Exchequer is, in principle and form and substance still so analogous "with the proceedings of the Court in former times, that precedents and usage are in a remarkable degree, with reference to the "primary objects of its jurisdiction, allowed on all occasions to "have greater authority and weight, and are more resorted to and "relied on in this than in any Court in Westminister Hall."

However, by 22 and 23 Vict. c. 21, entitled "*An Act to "regulate the office of Queen's Remembrancer and to amend the "Practice and Procedure on the Revenue Side of the Court of "Exchequer*," several important steps were taken in the direction of reform; and by section 26 thereof the Barons of the Exchequer were empowered to make rules for the purpose of assimilating the pleadings and practice of the Revenue side to those of its Plea side. In the following year the Barons acted upon the authority thus given them, and made a number of rules and forms with respect to such pleadings and practice. They will be found, together with some slight amendments, in 6 *Hurlstone & Norman's Exchequer Reports* at pp. i. to lxii, and 7 *Ibid.*, at p. 505.

By 28 and 29 Vict. c. 104, entitled *The Crown Suits, etc., Act*, 1865, further reforms were made in the procedure of the Court of Exchequer in revenue cases, and under sections 28, 39 62, power is given to the Barons to make rules for carrying into effect the provisions of the several portions of the Act. By section 22 of Pt. II. of this Act it is enacted that, "the Court shall "be deemed to be a Court of Civil Judicature within the meaning of section one hundred and three of the *Common Law "Procedure Act*."

Rules of procedure made under this Act in respect of suits by English Information may be found in L. R. 1 Ex. p 389.

By the *Supreme Court of Judicature Act*, 1873, secs. 16, and 31, the jurisdiction of the Court of Exchequer as a Court of

Revenue as well as a Common Law Court, was vested in Her Majesty's High Court of Justice, the Exchequer becoming one of the divisions of the High Court of Justice, and by section 18, sub-section 4 of the same Act, the jurisdiction and powers of the Court of Exchequer Chamber were transferred to Her Majesty's Court of Appeal.

In virtue of an order of Her Majesty in Council of the 16th December, 1880, which came into force on the 26th February, 1881, the ancient Court of Exchequer disappeared altogether from history, and became, together with the Court of Common Pleas, consolidated with the Court of Queen's Bench under the name of the Queen's Bench Division of the High Court of Justice. (1). This was the result of the legislative measures for re-organizing the courts which began with the Judicature Act of 1873. (2). There is now one Supreme Court of Judicature in England, which is divided into "Her "Majesty's High Court of Justice," and "Her Majesty's Court "of Appeal," the former being composed of the Queen's Bench Division, the Chancery Division and the Probate, Divorce and Admiralty Division, the Queen's Bench Division, of course, exercising Exchequer jurisdiction.

The Judicature Acts have done a Herculean task in slaying the hydra of technical pleading in England. But with all its radical reforms this *fin de siècle* legislation did not venture to relegate the Crown's prerogative in judicial proceedings to the shades of oblivion, for by Order lxviii, r. l., it is provided that, save certain matters of practice therein specified, nothing in the whole code of rules shall affect the procedure or practice in any proceedings on the Revenue side of the Queen's Bench Division. (See *Attorney-General v. Barker*, L. R. 7 Ex. 177; *Attorney-General v. Constable*, L. R. 4 Ex. Div., 172; *Chitty's Arch. Prac.* 14th Ed., pp. 10, 203.)

The Exchequer Court of Canada.

A brief outline of the jurisdiction, in respect of revenue cases, exercised by the courts of the several Provinces, prior to Confederation, will be useful as an introduction to the consideration of the jurisdiction of the Exchequer Court of Canada.

By an Act of the Upper Canada Legislature, 34 Geo. III., c. 2, entitled "*An Act to establish a Superior Court of Civil and "Criminal Jurisdiction and to regulate the Court of Appeal,*" it was, amongst other things, enacted that the Court of King's Bench for the Province of Upper Canada should have as full power and jurisdiction to hear and determine causes with regard to the King's revenue as the Court of Exchequer in England.

Under this statute the Court of King's Bench for Upper Canada exercised the ancient jurisdiction, both at common law and in equity, of the English Court of Exchequer. (See *Reg. v. Bonter*, 6 U. C. Q. B. (O. S.) 551).

(1). Annual Practice, 1893, p. 49.

(2). *Wilson's Judicature Acts, 6th Ed. pp. 2 and 6.*

An instructive case touching the equity jurisdiction of the Court of Queen's Bench in revenue matters is that of *Miller v. The Attorney-General* (9 Grant, 558). In this case the Court of Chancery (per Vankoughnet, C.) declined to entertain a bill, filed by a defendant in a revenue suit at law in which the Crown had judgment, asking for a stay of proceedings on such judgment. The Court held that the equitable relief sought in such a case could only be granted by the Court of Queen's Bench. But Vice-Chancellor Spragge in *Norwich v. The Attorney-General* (9 Grant, 568), a case involving the same question, says, "I "have not considered the general question of jurisdiction, as that "point is *res judicata* by the decision of *Miller v. The Attorney-"General*. It certainly is an anomaly that the equitable jurisdic-"tion in matters of revenue at the suit of a subject in this prov-"ince resides in a court of common law, *if at all*, and not in a "court of equity."

In an earlier case in the Queen's Bench (*The Queen v. Bonter, supra*), Sir John Beverly Robinson, C. J., in delivering the judgment of the Court, says (p. 552):—"We are of opinion that "our statute 34 Geo. III. c. 2 gives to the Court all the juris-"diction, in regard to the collection of debts due to the Crown, "that belongs to the Exchequer in England."

Mr. Vice-Chancellor Spragge's strictures upon the anomaly of a court of law administering an equity jurisdiction which was denied to the Court of Chancery would seem to have borne weight with the Provincial Legislature when we examine the Act 28 Vict. c. 17. By section 2 of that statute it was enacted that the Court of Chancery in Upper Canada should have the same equitable jurisdiction in matters of revenue as the Court of Exchequer in England then possessed.

After the passing of the last mentioned Act the case of *Rastall v. The Attorney-General* (18 Grant, 138) was decided. This case arose upon a bill filed in the Court of Chancery, by two sureties upon a recognizance for the due appearance of a person arrested upon a criminal charge. The recognizance was prepared as if the accused and his two sureties were to join therein; but the magistrate discharged the prisoner without obtaining his acknowledgement of the recognizance. The accused then fled the country; the recognizance was estreated at the next sitting of the Court of Quarter Sessions for the county, and, it having been entered on the roll of extents, execution was issued thereon, under which the sureties' goods had been seized by the sheriff, who was about to sell them. The bill alleged that the plaintiffs had executed the recognizance upon the understanding that the prisoner was to execute it also, and prayed that inasmuch as he had been released from custody without being required to do so, that the sureties might be declared to be discharged from all liability on the recognizance. The Court of Appeal held that inasmuch as the forfeited recognizance had never been estreated into the Queen's Bench it was not a record of that Court, sitting as a Court of revenue, and, therefore, the powers conferred by statute upon that Court and on the Court of Chancery similar to those possessed by the Court of Exchequer in England in matters of revenue,

did not attach upon and could not be exercised in regard thereto.

The opinions of the judges on appeal in the above case, as well as that of Vice-Chancellor Strong in the Court below, are prepared with great research and ability, and, constituting, as they do, a most valuable repository of the law pertaining to revenue matters both in England and the Province of Ontario, will well repay perusal by those interested therein.

In the case of *The Attorney-General v. Walker*, (25 Grant, 233, and 3 Ont. App. 195) it was held that where the Crown seeks to enforce a claim for excise duties fraudulently withheld, proceedings for that purpose may be instituted by the Attorney-General in the Court of Chancery although there are no particular equitable circumstances connected with the demand requiring the interposition of a Court of Equity. Besides deciding a number of questions, a discussion of which is not within the scope of the matter here in hand, the Court of Chancery (Per Spragge, C.) expressed the opinion that the general principle of law that the Crown may choose its own forum must be taken with this qualification, that the course of procedure in the forum chosen is not inappropriate, but is fitted for the hearing and disposition of the suit instituted by the Crown. (1).

By the Ontario Judicature Act (44 Viet. c. 5), the Court of Appeal, and the Courts of Queen's Bench, Chancery and Common Pleas were consolidated into the Supreme Court of Judicature for the Province of Ontario. The Supreme Court of Judicature was divided into two permanent parts, i.e., the High Court of Justice for Ontario, and the Court of Appeal for Ontario; the High Court of Justice being in turn subdivided into three divisional courts—the Queen's Bench, Chancery, and Common Pleas. Unlike the English Act, the Ontario Act distinctly makes the High Court and its several Divisions a continuation of the Courts existing at the time of its passage, with merely a new name. (2) (See Holmstead and Langton's Ont. Jud. Acts, pp. 8, 10.) The High Court in each of its divisions administers both a Common law and Equity juris-

(1.) For the views of English judges and text-writers upon this principle of law, see *Cawthorne v. Campbell* (1 Anstr 205); *Corporation of London v. Attorney-General* (1, H. L. 440); *The Attorney-General v. Allgood* (Parker's Rep. 1); *Baron de Bode v. The Queen*, (13 Q. B. 364) *Lamb v. Gunman* (Parker's Rep. 143); *Pennington's Case* (1 Anstr. 214), *Re Kingsman* (1 Price, 206); *Chitty's Prerog.*, p. 244; *Bacon's Abr. tit. Prerogative*. The principle has also been considered in a recent case (that of *Farwell v. The Queen*), in the Supreme Court of Canada. See the judgment of King, J. in 22 Can. S. C. R., p. 562.

(2) At the time of going to press there is a Bill before the Ontario Legislature for, amongst other things, improving the procedure of the courts. By section 11 thereof it is provided that:—"The Queen's "Bench, Chancery and Common Pleas Divisions of the High Court "shall not sit or give judgments as such divisions; and there shall not "be divisional courts of any of the said divisions, but the divisional "courts shall be divisional courts of the High Court, without reference "to the said divisions."

diction. By sec. 24 of the Act, as embodied in R. S. O. 1887 c. 44, the High Court is expressly given the same equitable jurisdiction in matters of revenue as the Court of Exchequer in England possessed on the 18th day of March, 1865.

This brings us to the end of the legislative enactments regulating the jurisdiction of the courts in Ontario in respect of revenue cases.

The procedure of these courts in matters of petition of right is briefly referred to in another place.

*** For reasons known to all persons familiar with the early history of Canada, the laws of the Province of Quebec differ materially from those of the other provinces of the Dominion.

Preceding the date at which the Colony passed under the British flag, French law prevailed all through Canada. During the first three years of the English period, the administration of justice was left to a purely military Government. This period was afterwards called the "Military Reign."

By a Royal Proclamation of the 7th October, 1763, made under the Treaty of Paris, King George III. provided for the establishment of Courts of Judicature and Public Justice within the Colony for the hearing and determining of all causes as well criminal as civil, according to law and equity, and as near as may be agreeably to the laws of England, with leave to appeal in civil cases, under the usual limitations and restrictions, to the Privy Council in England.

General Murray, who took part in the siege of Quebec in 1759, and who was commandant of the city after its capitulation, was in the year 1763 appointed civil Governor of the Province, and by his Commission was, among other things, empowered to create and constitute such Courts of Judicature as to him seemed fit and necessary. Under an Ordinance passed under his direction on the 17th September, 1764, a Supreme Court of Justice or Court of King's Bench was duly created, having jurisdiction and power to adjudicate according to the laws of England and the Ordinances of the Province.

This system of judicature was maintained until 1774, when, by the passing of the *Quebec Act*, 14 Geo. III., ch. 83 (U. K.) section 8, French law as it obtained in the Province of Quebec between Canadian citizens before the cession, was re-established in civil matters; while, by the 11th section, the criminal laws of England were made applicable to the Province. And these laws, as from time to time modified by statute, have remained in force in the Province up to the present day.

By section 2 of 34 Geo. III., ch. 6, Courts of King's Bench for the Districts of Quebec and Montreal were constituted and such Courts were given "original jurisdiction to take cognizance "of, hear, try and determine.....all causes, as well civil "as criminal and where the King is a party... .....etc., "etc."

The next step of importance in the way of legislation affecting the courts, was the "*Act to amend the laws relating to the "Courts of Original Civil Jurisdiction in Lower Canada*, (12 Vict. ch. 38) by which the Court of Queen's Bench was abolished

and the Superior Court for the Province constituted and (sec. VI.) given, with certain exceptions therein specified, "original civil "jurisdiction throughout Lower Canada with full power and "authority to take cognizance of, hear, try and determine in the "first instance and in due course of law, all civil pleas, causes and "matters whatsoever, as well those in which the Crown may be a "party, etc., etc."

The several Courts of justice now having jurisdiction in the Province of Quebec are regulated by Art. 2289 of the Revised Statutes of the Province of Quebec.

The laws of the Province of Quebec in civil matters in force at the present day are mainly those which, at the time of the cession of the country to the British Crown, obtained in that part of France then governed by the Custom of Paris, as modified, however, by provincial statutes, or by the introduction of portions of the law of England in particular cases, and are to be found in the Civil Code of Lower Canada made in pursuance of 29 Vict. ch. 41.

The procedure of the Courts in civil matters is also regulated by a code founded upon and following the general lines of the Ordinance of 1667, which governed the procedure of the courts in France at the time of the cession.

In the case of *The Attorney-General v. Black*, decided in the King's Bench in 1828 (Stu. R. 324,) it was held that where the greater rights and prerogatives of the Crown are in question, recourse must be had to the public law of the Empire by which alone they can be determined; but where its minor prerogatives and interests are in question they must be regulated by the established law of the place where the demand is made. Since confederation, some decisions to the same effect have also been rendered by the courts of the Province, namely:—*Monk v. Ouimet* (19 L. C. J., 71) which decided that the privilege of the Crown to take precedence in respect of its claims over those of private creditors, being one of the minor prerogatives, is to be governed by the law of Canada derived from France and not by the law of England. In this case the court was also of opinion that the Ordinance of August, 1669, was not the origin of the legal hypothec of the Crown in France upon the property of its officers, *comptables*; but that such privilege existed there by the jurisprudence of the country before the creation of the *Conseil Supérieur* in 1663. In the case of *The Attorney-General of Quebec v. The Attorney-General of Canada*, (2 Q. L. R., 236) the decision was to the effect that an escheat is one of the sources of revenue which, as a minor prerogative of the Crown, was, prior to 1867, vested in the respective provinces now confederated into the Dominion of Canada. This case is also an authority for the proposition that all territorial Crown rights and privileges possessed by the late Province of Canada, Nova Scotia and New Brunswick before the Union have been, by *The British North America Act*, 1867, given to the several Provinces of Ontario, Quebec, Nova Scotia and New Brunswick. The able opinions of the judges of the Queen's Bench in this case will repay careful examination. (1).

(1). For the opinion of the Privy Council upon a cognate question arising in the Province of Ontario, see *Mercer v. The Attorney-General of Ontario*, (8 App. Cas. 767).

Another case of some importance dealing with the rights of the Crown in the Province of Quebec is that of *The Exchange Bank of Canada v. The Queen*, (11 App. Cas. 157), in which the question raised was whether the Crown, being an ordinary creditor of a bank which has been put in liquidation, had any priority or privilege over other creditors in respect of a debt due by such bank. On appeal to the Judicial Committee of the Privy Council from the Court of Queen's Bench (Appeal Side) for Lower Canada, it was held that the Crown is bound by the two codes of Lower Canada, and can claim no priority except what is allowed by them. Being an ordinary creditor of a bank in liquidation, it is not entitled to priority of payment over its other ordinary creditors. Prior to the codes, the law relating to property in the said Province was, except in special cases, the French law, which only gave the King priority in respect of debts due from "*comptables*,"—that is, officers who received and were accountable for the King's revenues. (a).

Article 1994 of the Civil Code must be construed according to the technical sense of "*comptables*," and Article 611 of the Code of Civil Procedure, giving to the Crown priority for all its claims, must be modified so as to be in harmony therewith. Accordingly, by its true construction, the intention of the legislature was that in the absence of any special privilege, the Crown has a preference over unprivileged chirographic creditors for sums due to it by a defendant being a person accountable for its money. (b.)

* * * Some years elapsed after the Treaty of Utrecht, before England began to recognize the fact that the Province of Acadia, or Nova Scotia, was of considerable military and commercial importance. It was not until 1749 that the Lords Commissioners for Trade and Plantations entered upon a policy of colonization for the Province. (*See* the "Proposals of the Lords Commissioners to His Majesty for the Introduction of British Settlement "and of Civil Government in the Province of Nova Scotia," dated 7th March, 1749, in Houston's *Const. Doc. of Can. p.* 7.) In the Commission issued to Governor Cornwallis on the 6th of May, 1749, power was given him, with the advice and consent of Council, to constitute and establish "Courts of Judicature and Public "Justice for the hearing and determining of all causes, as well "criminal as civil, according to Law and Equity." From 1749 to 1754 the general jurisdiction over criminal causes was exercised by the Governor and Council who sat under the name of the General Court, a sort of provincial *Curia Regis*. (*See* Murdoch's *Ep. N. S. L. III., p.* 53). In 1754 this jurisdiction and the records of the court were transferred to the Supreme Court, which had been created under the powers conferred upon the Governor by his Commission.

In the early days of the Colony, by the terms of the Royal Commission and instructions, the Governor for the time being always acted in the capacity of Chancellor of the Province. (*See*

(a). See also *Maritime Bank v. Rec. Gen. of New Brunswick*, [1892] A. C. 437; and *Maritime Bank v. The Queen*, 17 Can. S. C. R. 657.

(b). See now *The Bank Act*, 53 Vict. ch. 31 sec. 53.

Murdoch's Ep. N. S. L. IV., p. 44.) But in 1826, by the Provincial Act, 7 Geo. IV. c. XI., provision was made for the appointment of a Master of the Rolls, and upon the nomination of the Honourable Simon Bradstreet Robie to that office equity business became systematized.

By sec. 1 of chapter 126 of *The Revised Statutes of Nova Scotia*, 1st Series (1851), it was provided that "The Supreme "Court shall have within this province the same powers as are "exercised by the Courts of Queen's Bench, Common Pleas, and "Exchequer in England." In 1855 the provincial Court of Chancery was abolished and its jurisdiction transferred to the Supreme Court, and by 23 Vict. c. 32, sec. 1 (1860) it was provided, that "in all causes in the Supreme Court, in which matters of law and "equity arise, the Court shall have power to investigate and de- "termine both the matters of law and equity, or either, as may be "necessary for the complete adjudication and decision of the "whole matter, according to right and justice, and to order such "proceedings as may be expedient and proper." Thus, it will be seen that this enterprising little Province forestalled the Mother country in consolidating the law and equity jurisdiction of the courts by some thirteen years. In view of these enactments there can be no doubt that the Supreme Court of Nova Scotia after 1860 had all the jurisdiction of the Exchequer and Chancery Courts in England in respect of revenue cases within the Province.

The most important revenue case to be found in the Nova Scotia Reports is that of *Uniacke v. Dickson* (James, 287) decided in 1848. In this case the Supreme Court of Nova Scotia had to consider the question of the application to the Province of the statutes 33 Hen. 8. c. 39 and 13 Eliz. c. 4, which gave the Crown a lien upon the real estate of certain public officers as a security for the fulfilment of their bonds, and they decided, quite contrary to the view held by the Supreme Court of New Brunswick in *The King v. Morse*, *The King v. McLaughlan*, and other cases referred to *infra*, that the former statute (as well as the latter) was not in force in the Province of Nova Scotia. The *ratio decidendi* of the case is, that, in general, the revenue laws of England are not applicable to the Province of Nova Scotia except in so far as the Provincial Legislature has seen fit to adopt their provisions; that the whole of the English Common Law will be recognized as in force there, excepting such parts as are obviously inconsistent with the circumstances of the country; while on the other hand none of the Statute Law will be received except such parts as are obviously applicable and necessary.

The Vice-Admiralty Court for the Province of Nova Scotia had jurisdiction in revenue matters conferred upon it by Imperial Statutes.

By the Act, 49 Geo. III. (U.K.), c. 107, it was enacted that "all penalties and forfeitures which may be incurred in the "British Colonies under any law relative to trade or revenue, may "be prosecuted or sued for in any Court of Record or Vice- "Admiralty Court, etc.," In *The Providence* (Stew. 199) it was

held that under this Act the Vice-Admiralty Court at Halifax had jurisdiction to decree forfeiture of goods under 12 Car. II. c. 18, s. 2.

For instructive opinions as to the extent of the general jurisdiction of the Nova Scotia Vice-Admiralty Court, reference is directed to *The Neustra Senora Del Carmen* (Stew., p. 83) and *The City of Petersburg* (1 Old., 814).

*** The question of Exchequer jurisdiction in the Province of New Brunswick has received considerable attention from some of the able judges who have sat upon its Supreme Court Bench.

The Supreme Court of New Brunswick was organized by virtue of the Royal Commissions issued to the judges and not by statute.

By the Commission issued by King George III. on the 25th November, 1784, to the Honourable George Duncan Ludlow, the first Chief Justice of the Province, he was empowered to hear, try and determine "all pleas whatsoever, criminal and mixed, "according to the laws, statutes and customs of that part of Our "kingdom of Great Britain called England, and the laws of Our "said Province of New Brunswick, not being repugnant thereto; "and executions of all judgments of Our said Court to award, and "to act and do all things which any of Our justices of either "bench or Barons of the Exchequer in England may or ought to "do."

The question of the extent of the Exchequer jurisdiction exercisible by the Supreme Court of the Province was, it seems, first considered in the unreported case of *The King v. Morse*, (East. Term, 1826). There it was held that the Supreme Court exercising, by the commissions of its judges, the power of the Barons of the Exchequer in England, had authority to relieve against estreated recognizances under the statute 33 Hen. VIII, c. 39 (1). The same statute was also pronounced upon in a similar way in the unreported case of *The King v. McLaughlan*, (Mich. Term, 1830). (See Stevens *Dig. N. B.*, pp. 412. 1179). The earliest reported case which discusses this question appears to be that of *The Queen v. Appleby*, (Berton's Rep., p. 397). In this case the court decided, as was held in the two earlier cases mentioned, that the statute referred to applies to the Province of New Brunswick. In the course of his judgment, Chipman, C.J., says:—(p.408) "Whether the jurisdiction, "in matters actually relating to Crown debts, which is exercised on "the *equity* side of the Court of Exchequer—in proceedings on "which side of the Court it seems that the *Chancellor of the "Exchequer* is still deemed and named as one of the judges—"(*Price's Ex. Prac. p.* 39; *Wall et al v. The Attorney-General*, "11 Price, 643) can be exercised by this Court, it is not necessary "now to consider. There could never be any pretence for this "Court holding the jurisdiction which the Court of Exchequer in "England, either on the common law or equity side, exercises by "fiction in cases between subject and subje". It seems to me to

(1) This statute has been held by the Supreme Court of Nova Scotia not to apply to that Province. (See *ante* p. 37).

"be clear that the matter with which we are now dealing would, "by virtue of the statute 33 Hen. VIII, c. 39, be within the "jurisdiction of the Barons of the Exchequer in England sitting "*on the common law side of the Court*, and, therefore, I conceive, "without any question, falls within our jurisdiction by virtue of "our Commissions as judges of this Court. I feel great satisfac- "tion that the careful and anxious attention which I have "bestowed upon this subject has conducted me to this result, because "it is in unison with the conclusion to which this Court came upon a "similar question, although without all the light now before us, in "the case of the estreated recognizance of *Rex. v. Morse, et al.* (East "Term, 1826) and because I consider it to be a most beneficial "authority for us to possess, and, in the words of one of the Barons "in *Ex parte Williams*, (8 Price, 3,) 'it would be quite lamenta- "ble if we were without it.'"

In the case of *The Attorney-General v. Baillie*, (1 Kerr, 443), decided in 1842, an information was filed on the Exchequer side of the Supreme Court against the defendant, the Commissioner of Crown Lands for the Province, charging him with having, in such capacity, received large sums of money in respect of Crown lands, amongst other things, which he had not accounted for, and praying the court to direct the defendant to account for the same under oath. The usual process as in like cases in England was prayed for by the information. The Court declined to entertain the information on the ground that being exclusively a Court of Common Law it did not possess the jurisdiction of the Equity side of the Court of Exchequer in England even in revenue cases. Chipman, C. J., in delivering the judgment of the court, said:—"Reliance is placed on the following clause of "the Commission, (to Chief Justice Ludlow) to act, and to do "all things which any of our Justices of either Bench or Barons "of the Exchequer in England may or ought to do. But the "acts and doings here authorized, must be in relation to the "pleas which the court is empowered to hear, try and determine. "And the power of the Barons of the Exchequer, which this "clause of the Commission conveys, must be confined to the "judicial powers exercised by them in the Common Law Court "of Exchequer where they are the sole judges, and cannot be "stretched to include powers which they exercise in another court, "in conjunction with other judges, especially powers of a Court "of Equity, which are altogether distinct from and foreign to "the powers known to the Common Law. If it had been intend- "ed to clothe this Court with a power to hold pleas in Equity, a "power so remarkable annexed to a Court of Common Law would "never have been left to be inferred from the obscure implication, "but would have been openly expressed....."

"Then it is said that this Court has actually, from the "beginning of its existence, exercised the powers of the Court of "Exchequer in England. But the only powers which this Court "has exercised, are those incident to the Court of Exchequer as a "Court of Common Law. Informations of debt and intrusion, "Commission to find the King's debts, *scire facias* on bonds, "and extents, are all proceedings on the Common Law side of the

"Exchequer, in which the subject has opportunity to plead "according to the course of the Common Law, and to have issues "of fact tried by a jury. Even the power to afford relief in cases "of forfeited recognizances, which the Court has exercised, was "sustained expressly on the ground that this was a power "exercised by the Barons of Exchequer in England, in the "Common Law branch of the Court. (*The Queen v. Appleby*, "Berton, 397). The present, as I stated at the outset, is the first "instance in which it has been attempted to attribute to this "Court the powers of the Court of Equity in the Exchequer "Chamber. The Court has no officers nor organization fitted for "the exercise of such powers. I think it is clear that it does not "possess them. I am, therefore, of opinion that the information "now before us cannot be entertained. The Crown is not "without remedy. It was stated to us on the argument that the "Attorney-General had already filed a Common Law information "in this case. The debt may also be found under a Commission. "If the powers of a Court of Equity are necessary for the "assertion of the Queen's rights, why may not the Attorney-"General proceed in the Court of Chancery?

Wilson v. Briscoe (2 Allen, 535) decided in 1853, was a case where a summary action of trespass was brought in the Mayor's Court for the City of St. John against the defendants for seizing goods in their capacity as revenue officers. The Attorney-General moved the Supreme Court for an order for the removal of the action into that court, sitting as a Court of Exchequer, upon the ground that the action involved the rights and revenues of the Crown. The court made the order. In delivering the judgment of the court, Carter, C. J., said:—"The application is "resisted, first, on the ground that this Court does not possess the "jurisdiction by which the Court of Exchequer in England "entertains such applications. We have no doubt that the "jurisdiction so exercised emanates from the plea side of the "Court of Exchequer, and that this court possesses the "jurisdiction of the plea side of the Court of Exchequer. "The second objection was that no question affecting the "revenue is involved; but from the statements of the "Attorney-General and the affidavit read, we think questions "affecting the revenue may arise. The third objection was that "these being summary actions cannot be removed under the Act "12 Viet. c. 40, s. 13. That section only, however, forbids the "removal by *habeas corpus or certiorari*, neither of which means "of removal are now sought. The fourth objection is that the "notice of the motion states that a "writ" will be moved for, "whereas the Attorney-General now asks for an order. There "can be little force in the objection; but if there be anything in "it, the difficulty might easily be removed by adopting the "original practice of the English Court of Exchequer and granting "a "writ" of *supersedeas*, to which the objection would not apply "here, which led to the change of practice in England."

*** The Royal Commission issued in 1769 to Walter Paterson, Esquire, first Governor of the Province of Prince Edward Island (then called the Island of St. John), empowered him, by and with

the consent of the Council, to erect, constitute and establish such and so many "Courts of Judicature and Public Justice" within the Island as he and they should see "fit and necessary for the "hearing and determining of all causes, as well criminal as civil, "according to Law and Equity, and for awarding execution "thereupon with all reasonable and necessary powers, authorities, "fees and privileges belonging thereto."

The Commission further gives "full power and authority to "constitute and appoint judges, and, in cases requisite, Commis- "sioners of Oyer and Terminer, Justices of the Peace, Sheriffs, "and other necessary Officers and Ministers in our said Island, for "the better administration of Justice, and putting the laws in "execution, and to administer or cause to be administered unto "them, such Oath or Oaths as are usually given for the due "execution and performance of offices and places, and for the "clearing of truth in judicial cases."

This Commission is printed, *in extenso*, in the Dominion Sessional Papers, Vol. 16, No. 70 (1883). A communication from Mr. Arthur Newbery, Assistant Provincial Secretary, to Lieut.-Governor Haviland, also printed at length there, states that he had searched the records of the Province, and, with the exception of the above mentioned Commission to Governor Paterson, he could find no document on file relating to charters or constitutions granted to the Province by the Crown, nor could he find the instructions referred to in such Commission.

The jurisdiction of the Supreme Court of the Island, like that of New Brunswick's Supreme Court, was created under Royal Commission to the judiciary instead of by provincial legislation. John Duport was appointed the first Chief Justice of the Island on the 19th September, 1770, and it is proper to assume that by his Commission the court over which he was to preside was clothed with a jurisdiction substantially identical with that given some years later to the Supreme Court of New Brunswick, under the Commission to Chief Justice Ludlow of that Province. Certain it is that no time was lost by Governor Paterson and his Chief Justice in establishing Courts of Judicature for the Province, for by the second Act passed by the first Legislature convened in the year 1773, all proceedings in the courts of the Province prior to that date were confirmed.

By the Provincial Revenue Act, 25 Geo. III, c. 4 (1785) it was provided (sec. 29) that all causes or trials for forfeitures and penalties inflicted in respect of breaches of such Act might be commenced and prosecuted in any of His Majesty's Courts of Record in the Province. Sec. 34 provided that either of the parties to a revenue suit who might be dissatisfied with the judgment of an inferior court might appeal to the Supreme Court. By the Provincial Revenue Act, 19 Vict. c. 1, sec. 90, the Supreme Court was empowered to issue Writs of Assistance to Customs' officers. This power is now exercisible by the Exchequer Court of Canada.

*** Under the Act of the United Kingdom, 12 and 13 Vict., c. 48, and the Order of the Queen in Council of the 4th April, 1856, the Supreme Court of Civil Justice of Vancouver Island was

created. The order in council gave the Supreme Court full power and authority to make rules and forms of practice, process and proceedings to correspond, as nearly as possible, with the rules and forms in use in Her Majesty's Supreme Courts of Law and Equity at Westminster. The Supreme Court was also given by this Order, "full power, authority and jurisdiction to apply, judge "and determine upon and according to the laws then and there- "after in force within Her Majesty's said Colony." A very full account of the creation of this court is given in Mr. Justice Crease's judgment in the famous *Thrasher Case* (1 B.C.L R., 189 et seq.). Speaking of the Commission of David Cameron, Esquire, the first Chief Justice of the Court (at p. 194), he says:— "Chief Justice Cameron's commission and jurisdiction were very "full, and covered all matters whatsoever, criminal and civil. A "reference to the Act and Order in Council will show that the "powers of the Court and the judge thereof were as ample as "could be made. And these were sent out ready made, direct "from the Imperial Government, so that the Court was not "constituted by the Colony, and *a fortiori* not by a subordinate "province of a Colony." The remark, in the concluding portion of this excerpt from the learned judge's opinion, was evoked by the contention put forward by Counsel in argument that the Supreme Court of Vancouver Island was originally created by a Provincial Ordinance. By an Ordinance of 8th June, 1859, (*B. C. Con. Stat.* 1877, *Cap.* 51), this court was styled "The Supreme Court of Civil Justice of British Columbia," and was given "complete cognizance of all pleas whatsoever," and vested with "jurisdiction in all cases, Civil as well as Criminal, arising within "the said Colony of British Columbia." It is proper to mention here that in the opinion of Mr. Justice Crease, expressed in the *Thrasher Case*, (1. B. C. L. R., 194) by the Proclamation (having the force of law) dated the 19th November, 1858, so much of the Statute Law of England as was not inapplicable was introduced into the Colony as well as "*all* the "common law (if any) as had not been brought in, as their natural "heritage, by the colonists themselves when they settled in the "country." By the Ordinance made after the union of the Island with the Mainland, on 6th March, 1867, (*Con. St. B. C.* 1877 *c.* 103) this proclamation was however repealed and the civil and criminal laws of England, as they stood on the 19th November, 1858, were, so far as applicable, and saving modification by previous provincial legislation, brought into force in the whole Province of British Columbia. This, of course, comprehends both substantive law and procedure.

The jurisdiction of the Supreme Court of Civil Justice for British Columbia was added to from time to time during the period which elapsed between its creation and the union of British Columbia with the Colony of Vancouver Island. When that event was consummated, the court was possessed of full and complete jurisdiction in respect of Common Law, Equity, Probate, Divorce, Bankruptcy, and Admiralty.

Some three years after the union of the Island and the Mainland, an Ordinance was passed, dated 1st March, 1869,

(*Con. St. B. C.* 1877, *c.* 53) altering the names of the Supreme Courts therein to "The Supreme Court of Vancouver Island," and "The Supreme Court of the Mainland of British Columbia," respectively. Provision was also made for the ultimate merger of the two courts into one, and on the 9th March, 1869, an Ordinance (*Con. St. B. C.*, 1877, *ch.* 104) was passed, declaring that the "Common Law Procedure Act, 1852," the "Common Law Procedure Act, 1854," the "Common Law Procedure Act, 1860," (with the exception of sections 104 to 115, both inclusive, of the "Common Law Procedure Act of 1852") and the rules of practice and pleading made in pursuance of the said Acts should, so far as the adoption of them was practicable, regulate the practice and procedure of each and every of the Superior Courts of this Colony in all actions and proceedings at law. It was further provided that the several statutory enactments regulating the practice, pleadings and procedure of the High Court of Chancery, in force on the 14th day of February, 1860, and the several orders and regulations in force in the said High Court on the said 14th day of February, 1860, should, so far as practicable, regulate the proceedings of the said courts, and each of them, sitting in equity.

By section 1 of the "*Courts Merger Ordinance*, 1870" (being Cap. 54 of the *Consol. Stats. of B. C.*, 1877,) it was enacted that "the merger of the Supreme Court of the Mainland of British "Columbia and the Supreme Court of Vancouver Island into the "Supreme Court of British Columbia, under the 'Supreme Courts "Ordinance, 1869," shall be deemed and taken for all purposes "whatsoever to have taken place as from the 29th day of March, "A. D. 1870, and shall be so recognized in judicature, and there-"out, in all proceedings, matters and things by all persons and "for all purposes whatsoever."

Thus, as has been said by a writer in *The Canada Law Journal* for January 16th, 1882 (p. 28), the Supreme Court of British Columbia, is "no mushroom tribunal, but an old and "honoured court of Imperial statutory creation and descent, and "heir of all the powers, authorities and jurisdiction of the "Supreme Courts of the Colony in all pleas civil and criminal "whatsoever arising within it."

*** Although established since Confederation mention may be made *en passant* of the revenue jurisdiction of the courts of the Province of Manitoba. The Court of Queen's Bench for that Province was created in 1872, (35 Vict. c. 3). By an Act of the Provincial Legislature in 1874 (c. 12), it was provided that the said court should decide and determine all matters of controversy relative to property and civil rights, according to the laws existing or established and being in England on the 15th July, 1870, so far as applicable to such matters in the Province. It was also provided that the Court of Queen's Bench should have and exercise all the jurisdiction, both civil and criminal, as was exercised on the date mentioned by Her Majesty's Supreme Courts of Common Law at Westminster or by the Court of Chancery at Lincoln's Inn, in England.

*** It is not within our present purpose to discuss the jurisdiction

of the Courts of the North West Territories in respect of revenue cases, as such courts were constituted since the establishment of the Exchequer Court of Canada.

*** Having examined at as great length as space would permit the Exchequer jurisdiction of the courts of the several provinces for the purpose before mentioned, we now come to a consideration of the jurisdiction of the Exchequer Court of Canada.

In the year 1875 the Supreme and Exchequer Courts of Canada were created by the Act. 38 Viet. c. 11. By section 58 it was enacted that:—

"The Exchequer Court shall have and possess concurrent "original jurisdiction in the Dominion of Canada, in all cases in "which it shall be sought to enforce any law of the Dominion of "Canada relating to the revenue, including actions, suits and "proceedings, by way of information, to enforce penalties and "proceedings, by way of information *in rem*, as well in *qui tam* "suits for penalties or forfeitures as where the suit is on behalf of "the Crown alone; and the said Court shall have exclusive "original jurisdiction in all cases in which demand shall be made "or relief sought in respect of any matter which might in "England be the subject of a suit or action in the Court of "Exchequer on its revenue side against the Crown or any officer "of the Crown."

By section 59, the Exchequer Court was given concurrent original jurisdiction with the courts of the several provinces "in "all other suits of a civil nature at common law or equity, in "which the Crown in the interest of the Dominion of Canada is "plaintiff or petitioner."

By section 4 it was enacted that the Chief Justice and Judges of the Supreme Court of Canada should be, respectively, the Chief Justice and Judges of the Exchequer Court of Canada.

When the Bill to constitute these federal courts was introduced into Parliament by the Attorney-General (now Mr. Justice Fournier of the Supreme Court of Canada) some opposition to its passage was encountered at the hands of several legal members of the House who were apprehensive that the new courts might lessen the sphere of action of the provincial courts and depreciate their authority. Especially was this objection urged against the creation of a federal Court of Exchequer. Mr. Palmer (St. John, N. B.,) said, (Hans., 1875, p. 738):—"The clauses (of the Bill) "from 58 to 62 which had reference to the Exchequer Court were "entirely unnecessary. A grave mistake had been made in "making provision in the Bill for such a court. He believed "there was ample jurisdiction in the courts of the different "Provinces for deciding Exchequer cases, and for dealing with "them more conveniently and at less expense than before the "proposed court."

Mr. Irving (Hamilton, Ont.,) objected to the establishment of a Court of Exchequer largely upon the ground that it would introduce a new practice into the country just at a time when there was a desire to break down differences in practice and have uniformity of procedure. (See Hans., 1875, p. 746.) Mr. Moss (West Toronto), who was in favour of the Bill,

at p. 751 of Hans., 1875, said:—"One objection made was that "the Bill would cause a change in the practice prevailing in the "different provinces, and no lawyer liked to change the practice. "But there was a tangible advantage to be gained in securing a "similarity of practice in the Exchequer business. That was a "class of business that particularly pertained to the Dominion; it "was a branch in which the principles of the law were the same "in all the provinces, and, therefore, it was desirable to secure "uniformity of practice which could be best obtained by "transferring this branch of business to the court which would "be known as the Court of Exchequer."

The Attorney-General in introducing the Bill, said: —"The "Bill also provided for the creation of a Court of Exchequer. "Some objection has been made to one of the Bills presented by "the honourable member for Kingston (Sir John A Macdonald) "for the reason that it gave to the Court of Appeal an original "jurisdiction. He would avoid that difficulty by creating two "courts, one of appellate jurisdiction—the Supreme Court of Ap-"peal—and another, a tribunal of the first instance, composed of "the same members, but being a totally different court. There "was ample authority for adopting that course, and he found it "in clause 101 of the Constitution (The B. N. A. Act)....." "The measure was certainly of the greatest importance. It had "been mentioned in the Speech from the Throne four times, "and this was the third Bill that had been submitted to the "House. Everyone admitted that it was very important that the "Federal Government should have an institution of its own in "order to secure the due execution of its laws. There might, "perhaps, come a time when it would not be very safe for the "Federal Government to be at the mercy of the tribunals of the "Provinces.....Everyone, he believed, would ad-"mit that it was not a party measure, and think it his duty to "assist in carrying a good law which had for its sole object the "harmonious working of our young Constitution." (See Hans., 1875, pp. 285, 288.)

The bill passed its third reading by a large majority of votes.

The wisdom, from a federal point of view, of establishing such a court as the Exchequer in Canada is made manifest by the large volume of important revenue business it has discharged since the year 1875 with the most satisfactory results; and the best refutation of the fears expressed by members of the House that its operation would be regarded with a jealous eye by the provincial authorities lies in the fact that some of the provincial legislatures have passed enactments giving the Exchequer Court of Canada jurisdiction in certain cases between such provinces and the Dominion, and in certain matters of controversy which may arise between any two of such provinces.

By the Acts 42 Viet. c. 8, s. 2 and 44 Viet. c. 25, s. 40, the Exchequer Court of Canada was given appellate jurisdiction in all cases of arbitration arising under the "Act respecting the Official Arbitrators" (R.S.C. ch. 40) when the claim exceeded in value the sum of $500.

In the year 1887, in virtue of the Act, 50–51 Vict. c. 16, the Chief Justice and Judges of the Supreme Court ceased to be Judges of the Exchequer Court, and provision was thereby made for the appointment of a single judge for such court. By this Act the jurisdiction of the court was also very materially enlarged. The Board of Official Arbitrators was abolished, the Arbitrators becoming Official Referees of the court, and the jurisdiction exercisible by them under chapter 40 of *The Revised Statutes of Canada* being vested in the Exchequer Court.

Great inconvenience had been experienced in prosecuting claims before the Official Arbitrators. The Board was composed of four members residing in different parts of the Dominion, and as they had to travel long distances for the purpose of adjudicating upon claims, it was found that the system was attended with considerable expense and difficulty in getting the Board together. Besides this disadvantage in proceeding before the Arbitrators, there was the further objection that they were laymen, and consequently lacked a knowledge of legal procedure, which is so essential to the prompt discharge of business and the saving of expense before tribunals dealing with such a class of cases as those coming before the Board.

By section 58 of 50–51 Vict. c. 16, it is provided that whenever in any Act of the Parliament of Canada, or in any Order of the Governor in Council, or in any document, it is declared that any matter may be referred to the Official Arbitrators acting under the "Act respecting the Official Arbitrators," or that any powers shall be vested in, or duty shall be performed by such Arbitrators, such matters shall be referred to the Exchequer Court, and such powers shall be vested in, and such duties performed by it; and wherever the expression "Official Arbitrators" occurs in any such Act, order or document, it shall be construed as meaning the Exchequer Court.

By the Act 50–51 Vict., c. 16, a remedy was given to the subject against the Crown in certain cases arising out of the negligence of its officers. Provision was also made for the reference of claims to the court by the Heads of the several Departments of the Government as the alternative of proceeding by petition of right. Under this Act the court has also concurrent jurisdiction with the provincial courts in several specified cases, among them being cases in which it is sought, at the instance of the Attorney-General of Canada, to impeach or annul any patent of invention, or any patent, lease, or other instrument respecting lands. An appeal to the Supreme Court of Canada from the judgment of the Exchequer Court was provided for in cases in which the actual amount in controversy exceeds $500. This statute, with its amendments, will be found in the later portion of this book.

By the Act 52 Victoria, c. 38, the Exchequer Court Act of 1887 was amended in respect of the reference of cases by the court, to the Registrar, Official Referees and Special Referees. This Act also empowered the court to call in the aid of specially qualified assessors when it may be found expedient so to do in any case before the court. Provision was also made for the making of General Rules and Orders by the Judge of the Exchequer

Court to regulate the practice and procedure of the court, as well in cases arising under *The Exchequer Court Act* as under any statute giving jurisdiction to the court; for fixing the amount of costs and fees to be taxed in Exchequer cases, and for defining the rights and duties of the officers of the court. An important provision of this Act is one enabling the Crown, in cases where lands are injuriously affected by the construction of a public work, and where the injury may be removed in whole or in part by an alteration or addition to the work in question, to undertake, in the pleadings or at the trial, to make such alteration or addition; and in such a case the damages are to be assessed in view of the undertaking. Another provision of this Act enables the Minister of Finance and Receiver-General to pay to any person entitled by the judgment of the court to any moneys or costs, interest thereon at a rate not exceeding four per cent. from the date of such judgment until payment.

By the Act 53 Vict., c. 35, the 51st section of the Act 50–51 Vict., c. 16, respecting appeals from the Exchequer Court to the Supreme Court of Canada, is repealed and new provisions enacted in lieu thereof. This Act will be found *post*.

By the Act 54–55 Vict., c. 26, a wide jurisdiction in cases arising upon conflicting applications for any Patent of Invention or for the registration of any Copyright or Trade-mark, and in proceedings to impeach or annul the same was given to the Exchequer Court. It also gave the court concurrent original jurisdiction with the provincial courts where a remedy is sought respecting the infringement of any Patent, Copyright and Trade-mark. Sec. 6 gives the Attorney-General of Canada the right to apply to the court for an interpleader issue when the Crown or its officer is under liability for any debt, money, goods, or chattels in respect of which the Crown or its officer may be sued or proceeded against by two or more persons making adverse claims thereto, and where Her Majesty's High Court of Justice in England could, at the time the Act came into force, grant such relief to any person applying therefor in the like circumstances. By 53 Vict., c. 13 (as amended by 54-55 Vict., c. 33) the Exchequer Court is invested with the jurisdiction in cases for forfeiture of patents of invention theretofore exercised by the Minister of Agriculture, and the court is further given concurrent jurisdiction with the provincial courts in proceedings for the impeachment of patents. By 54-55 Vict., c. 35, the Minister of Agriculture is empowered to refer any matter in dispute touching the registration of a trade-mark to the Exchequer Court, to be therein heard and determined. By the same Act the court is given jurisdiction for making, expunging or varying any entry in the register of trade-marks; for the rectification of the register, as well as for the alteration of a trade-mark; furthermore the court is given jurisdiction for making, expunging or varying any entry in the register of industrial designs, and for adding to, or altering, any industrial design. By 53 Vict., c. 12 (as amended by 54 55 Vict., c. 34) the Exchequer Court was endowed with jurisdiction in cases arising upon conflicting claims to copyrights. These statutes, with their amendments, will be found in a subsequent portion of this work.

By *The Admiralty Act*, 1891, it was enacted (sec. 3) that "the Exchequer Court of Canada is and shall be, within Canada, "a Colonial Court of Admiralty, and as a Court of Admiralty "shall, within Canada, have and exercise all the jurisdiction, "powers and authority conferred by the said Act (*The Colonial "Courts of Admiralty Act* [*U.K.*] 1890), and by this Act." By sec. 5, power was given to the Governor in Council to constitute Admiralty Districts in Canada; and (by sec. 6) to appoint Local Judges in Admiralty for such districts. Both these requirements of the statute have been fulfilled. These two Acts, with the Rules regulating the practice and procedure in the Exchequer Court on its Admiralty side, will be found in the appendix to this book.

PETITION OF RIGHT.

The unanimity with which English jurists declare their ability to see in the famous clause of Magna Charta:—"*Nulli "vendemus, nulli negabimus aut differemus rectum vel justitiam*" —the origin of the petition of right of to-day, does perhaps more credit to their patriotic zeal than to the acuteness of their critical vision. In the formative period of English jurisprudence, the maxim *Ubi jus, ibi remedium* was not always applicable. It was one thing to obtain the recognition of a right, and quite another thing to possess the means of securing its observance.

It would appear to be beyond dispute that petition of right was not known until more than half a century after the Great Charter was wrested by the English nobles from the hand of pusillanimous King John. According to some authorities, (among the most recent, so far as text-writers are concerned, being Mr. Cutbill in his pamphlet on *Petition of Right*, published in 1874) this remedy took its origin from a deliberate act of Sovereign authority in or about the time of Henry III or Edward I; others hold the view that the remedy is a necessary incident of the English Constitution which always existed, but which only took definite shape in the great jural epoch which began with the reign of Edward I. (*See Chitty's Prerog.*; 339, 341; *Com. Dig. Action, c. i*; 3 *Black. Com.* 255; *Steph. Com.*, 11 *Ed., III.*, 680 *n* (*f*)).

It has long been taken for granted that no writ will lie against the Crown at the suit of a subject at common law (*Staundf., Prærog. Regis c.* 15, *fol.* 42; *Chitty's Prerog.* 339); and many writers assert that the only remedies the subject had against the King in ancient times were *petition of right*, *monstrans de droit*, and *traverse of office*.

The remedy by petition of right will receive as thorough an examination in the following pages as space will permit; but having mentioned the remedies by *monstrans de droit* and *traverse of office*, it will be well before proceeding further to dispose of them with as succinct an exposition as possible.

The method of obtaining redress by *monstrans de droit* was in this wise:—Where the right to the possession of real or personal property was in dispute between the Crown and a subject, and the right of the subject as well as of the Crown appeared upon record, the subject was entitled to his *monstrans de droit*, which simply meant putting in a manifestation or plea of right grounded upon facts already acknowledged and established, and praying the judgment of the court whether the King or his subject had the better right. The judgment, if against the Crown, was that of *ouster le main* or *amoveas manus*. (Cf. *Step. Com.*, III., 680, n.).

Although *monstrans de droit* is designated by Blackstone (3 Com. 256) as a common law remedy, yet Staundforde (*Prærog.* 72, b) distinctly says that this remedy was given by 36 Edward III, and did not lie at common law. This is the view held by the judges in the *Sadlers' case*, according to the report of the case by Anderson (See 1 *And.*, 181). This reporter moreover says (ibid.) that the *traverse of office* was also given by that statute. This opinion was adhered to by Lord Keeper Somers in the *Bankers' case*, (14 *How. St. Tr.* 78 *and* 79). In the early days of Crown suits the subject's procedure to obtain possession of real or personal property was always by petition (*Chitty's Prerog.* 341); but this mode was found to be attended with so much expense and procrastination that the cheaper and more summary proceeding by *monstrans de droit* was soon introduced in respect of this class of cases. After the statute 2-3 Edw. VI, c. 8, the proceeding by petition of right in the class of cases above referred to became practically superseded, and when it is considered that such cases represented the bulk of Crown litigation until the present century, it does not seem surprising that for four hundred years, little, if any, attention was bestowed by lawyers upon the doctrine and practice of this great remedy.

Before the Judicature Act, *monstrans de droit* might have been brought in the Petty Bag Office in Chancery, or in the Office of Pleas in the Exchequer. It would now have to be brought in the corresponding divisions of the High Court of Justice.

Traverse of Office was a mode of procedure whereby the subject could dispute an office or inquisition finding the Crown entitled to any property, the possession of which was claimed by the subject. This procedure was more generally resorted to in resisting extents than in any other cases. When the writ of extent had been executed, and the rule limiting the time for appearance of claimants endorsed thereon, the person disputing the debt came and entered his appearance and claim on the back of the writ. This was followed by a formal plea traversing the alleged debt of the Crown. The Crown in turn replied or demurred to this until issue joined, when the cause was set down for trial by jury at Westminster. If the Crown succeeded either upon verdict or non-suit, the judgment was that the subject "take nothing by his traverse." If title was found in favour of the traverser, the judgment was that the King's hands be amoved, and the party restored to the possession of the property in dispute.

The practice in respect of the two remedies of *monstrans de droit* and *traverse of office* will be found fully set forth in Chitty's *Prerogatives of the Crown* at pp. 352, 356, and Manning's *Exchequer Practice* pp. 86, 87 et seq.

It must be remembered that formerly petition of right was always a concurrent remedy in matters which might have been made the subjects of *monstrans de droit* or *traverse of office* (*Munn. Exch. Prac., 2nd Ed. p.* 121); and since the Act 23 & 24 Viet., c. 34, which, while it does not abolish these old remedies yet provides a much simpler and more effective remedy in respect of the same causes of action by petition of right, such remedies seem doomed to fall into obsolescence.

We have already said that it is postulated that the Crown is not amenable to an ordinary action at common law, but it is worthy of mention that the contention has been strenuously put forward that before petition of right was introduced the King was liable to an action in the same way and to the same extent as his subjects. This view is adhered to by Mr. Cutbill in his pamphlet above referred to. The chief authority upon which he relies is a dictum by Wilby, J. (*Y. B.* 24, *Edw. III.* 55*b.*) that he had seen a writ thus framed: "Præcipe Henrico Regi Angliae," in lieu whereof, he says, "is "now given petition by the prerogative." While this statement by Wilby, J., is adversely criticised by Brooke, C. J., in his *Abridgement*, tit. Pet. 12, and tit. Prærog. 2 (d), as well as by Erle, C. J., in the comparatively recent case of *Tobin v. The Queen* (16 C.B.N.S.356), the proposition is not so untenable as would at first appear. Nearly half a century before Mr. Justice Wilby's statement above mentioned was made, we find the following clear expression by counsel in *Thomas Corbett's case*, (*Y. B.* 33 & 35, *Edw.* 1, 470): "In old times every writ, whether of right "or of the possession, lay well against the King, and nothing is "now changed except that one must now sue against him by bill "(par bille—petition?) when formerly one sued by writ." This opinion does not appear from the report, which is a very full one, to have been controverted by the Bench or at bar. Speaking of this very passage in this report, Mr. Horwood, the translator and editor of the "Year Book" last cited, says (at pp. XV and XVI of his preface) that this passage not only confirms the dictum of Wilby, J. but other statements to the same effect to be found in the "Year Books" of Edw. III. He refers to Y. B. 22 Edw. III, 3b, where he says: "It is said that in the "time of King Henry and before, the King was impleaded like "any other man, but his son Edward ordained that one should "sue the King by petition." Mr. Horwood also refers to Y. B. 43 Edw. III, 22a, where, to use his own words again: "Cavendish said that in the time of King Henry, the King was only as "a common person, for then one might have a writ of disseisin "against the King, and all other kinds of actions just as against "any other person." Mr. Horwood seems to incline strongly to the correctness of Wilby's dictum. He says (p. XVI): "The "ordinance of the Council and of the twelve chosen by the Com-"mons made in the year 1258, and confirmed by Henry III in the

"following year, seems plainly to give the subject the right to sue "by writ against the King; (see Rymer's *Fœdera*, i, 381, ed. "1816) and it may have been one of the writs issued after this "provision that Wilby saw." Dr. Stubbs, by all odds our most painstaking and reliable constitutional historian, also seems to look upon Wilby's dictum as one not lacking strong authority to support it. (See *Const. Hist. Eng., Vol. 2 p.* 250.)

Proceeding by writ against the Sovereign would certainly be an anomaly to-day, but the question is really of small moment, as it is conceded by all our jurists that however wide the Sovereign's liability to the subject is or may hereafter be made, the proper and becoming remedy must always be the petition of right.

We now come to a consideration of the remedy by petition of right, the "birth-right of the subject," as it is called by Chitty in his *Prerogatives of the Crown* (p. 341.)

The great difficulty which has been experienced in tracing the history of the modern forensic petition back to its origin in the reign of Edward I. has been caused by unnecessary and futile attempts to discriminate with respect to the characters of the earliest recorded petitions, in other words, to classify them into petitions to Parliament and petitions to the King.

Even conceding that these petitions have in many instances been found inscribed upon the rolls of the National Council, or 'Parliament,' so called, this does not by any means affect their obvious and essential character. Besides the fact that the constitutional body which is now known as *Parliament* was at that time in its embryo state with the functions of its constituent parts wholly undefined, the word 'Parliament' itself had then no settled and exclusive meaning. The conference between King John and his armed vassals when *Magna Charta* was signed was called "*Parliamentum Runemede*," and 'Parliamentum' is indiscriminately applied in the reign of Edward I. to a session of the select or King's Council, a session of the Great Council, or a session of the *Commune Concilium* (*Cf. Gneist's Hist. Eng. Parl.* 112: and *Stubbs' Const. Hist. Eng.* (Vol. II, p. 274).

From the earliest times it was recognized that under the constitution of England the King was the fountain of justice, and that all petitions for redress, for grievances and wrongs must be presented to him; but, so long as the fountain was accessible, its environment—whether that was the King's Council or the *Commune Concilium*—would be a matter of small concern to the suppliant. But as a matter of fact we find that the petitions are invariably addressed *to the King*, or *to the King and his Council, and not to the Parliament* either literally or by any forced construction that can be placed upon the words used. That there was in the reign of Edward I. a recognized Council consisting of bishops, barons and judges permanently attendant upon the King, whose duty it was to advise him in all his Sovereign acts and to sit with him in open court for the purpose of assisting him in hearing suits and receiving petitions, is established by Stubbs in his *Constitutional History of England*, Vol. II, p. 273. At page 268 he makes the following clear statement as to the origin and character of this body as distinguished from the National Council

or Parliament :—"It is to the minority of Henry III that the real "importance of this body must be traced. Notwithstanding the "indefiniteness of the word *concilium*, it is clear that there was "then a staff of officers at work, not identical with the *Commune* "*Consilium Regni*. *The Supernum* or *Supremum Concilium*, "to which, jointly with the King, letters and petitions are "addressed, clearly comprised the great men of the regency— "William Marshall, the *rector regis et regni*, Gualo, the legate "and Pandulf after him, Peter des Roches, the justiciar, chancellor, "vice-chancellor and treasurer. It is addressed as *nobile* "*consilium, nobile et prudens consilium*; its members are "*majores* or *magnates de consilio, consiliarii* and *consiliatores*." At page 271 of the same volume, speaking of Edward I.'s dealings with this Council, Stubbs says :—"He seems to have accepted the "institution of a Council as a part of the general system of "Government, and, whatever had been the stages of its growth, to "have given it definiteness and consistency."

Reeves, in his *History of the English Law*, in speaking of the judicature of the Council (Vol. III, p. 155) says :—"The "tribunal next in authority to the parliament was *the Council*. "As the parliament was often called by this name, and there was "besides more than one assembly of persons called the council, "much difficulty has arisen in endeavouring to distinguish between "them. We have seen that petitions to Parliament in private "matters were addressed à *nostre seignour le roi et a son conseil*. "The King had a council which consisted of all the lords and "peers of the realm, who, it should seem, were called together by "him at times when the Parliament was not sitting; this was "called the *grand council*, as well as the parliament (being "probably the original *commune concilium regni* before the "commons were summoned thither), and was so termed to "distinguish it from the other *council*, which the King used to "have most commonly about him for advice in matters of law" ....."In both these councils the King sat as a judge and "causes heard there were said to be *coram rege in concilio*."

Mr. Frederick W. Maitland in his very instructive *Introduction to the Parliament Rolls of* 33 *Edward I* (1305) has this to say (at p. lxxxviii) about the parliaments of those days in general :—"Perhaps more than enough has already been said about "these controverted matters; but it seemed necessary to remind "readers, who are conversant with the parliaments of later days, "that about the parliaments of Edward I.'s time there is still much "to be discovered, and that should they come to the opinion that "a session of the King's council is the core and essence of every "*parliamentum*, that the documents usually called parliamentary "petitions are petitions to the King and his council, that the "auditors of petitions are Committees of the Council, that the "rolls of parliament are the records of the business done by the "Council,—sometimes with, but more often without, the "concurrence of the estates of the realm—that the highest "tribunal in England is not a general assembly of barons and "prelates, but the King's Council, they will not be departing very "far from the path marked out by books that are already classical."

Palgrave, in his work on the *King's Council*, p. 21, says :— "All parliamentary petitions, whether of the prelates, peers, "commons or individuals, until the reign of Henry V, were "addressed generally to the King conjointly with the Council."

Dr. Gneist, in his *History of the English Parliament* (at p. 164) expresses the opinion that it was not until the House of Commons had acquired its definite status as one of the estates of the realm in the fifteenth century that the true parliamentary petition came into vogue. (See also p. 163 of the same work, and Hearn's *Government of England*, p. 572.)

As our enquiry into the nature of the ancient petitions and the procedure upon them has largely to do with the reign of Edward I, we can do no better than to again refer at length to Mr. Maitland's valuable *Introduction to the Parliament Rolls of* 1305. At p. lxvii, he says :—"When we examine the character of these "petitions we soon see that for the most part they were not fit "subjects for discussion in a large assembly. They do not ask "for anything that could be called legislation ; the responses "that are given to them are in no sort private 'Acts of parliament'. "Generally the boon that is asked for is one which the King "without transcending his legal powers might either grant or "deny. Sometimes we may say that, if the facts are truly stated "by the petitioner, the King is more or less strictly bound by the "rules of common honesty to give him some relief:—The King "owes him wages, or his lands have been wrongfully seized by "the King's officers. At other times what is asked for is pure "grace and favour .... As yet no hard line is drawn between the "true petition of right which shall be answered by a *fiat* "*justitia* and all other petitions. 'Right' and 'grace' shade off into "each other by insensible degrees, and there is a wide field for "Governmental discretion."

These petitions, as Mr. Maitland points out (Introd. p. lxviii) were not enquired into by the King in Council, nor yet by Parliament. The suppliant merely got a reference of his plaint to some person or tribunal qualified to decide upon the merits thereof. As Mr. Maitland tersely expresses it, "he did not get "what he wanted, he was merely put in the way of getting it."

Sir Matthew Hale, (*Jurisdiction of the House of Lords*, pp. 67-68) speaking of the reference of these ancient petitions, says :— "But although the council received the petitions from the hands "of the receivers, yet they rarely (if at all) exercised any decision "or decisive jurisdiction upon them, but only a kind of deliberative "power, or rather direction, transmitting them to the proper "courts, places or persons where they were proper to be decided. ..... "Hence it is, that most of the answers that the council gave "were in the nature of remissions of the petitions to those persons "or courts that had properly the cognizance of the causes."

If the petition involved a matter touching a mere common law right between subject and subject it was referred to the King's Bench or Common Pleas ; if it involved an account between the Crown and its debtor it was referred to the Treasury and the Barons of the Exchequer ; if a matter of equity was concerned therein, the petition was sent to the Chancellor ; or if

it concerned a matter over which no existing forum had jurisdiction, it was referred to a special Committee created for such purpose by the Chancellor, the warrant for the issue of the commission being contained in the answer endorsed upon the petition.

Lord Keeper Somers says, in his celebrated judgment in the *Bankers' case*, (How. St. Tr. XIV. p. 59): "The truth is, the "manner of answering petitions to the person of the King was "very various; which variety did sometimes arise from the "conclusion of the party's petition; sometimes from the nature of "the thing; and sometimes from favour to the person: and "according as the indorsement was, the party was sent into "Chancery, or the other courts."

"If the indorsement was general, *'soit droit fait al partie,'* "it must be delivered to the Chancellor of England, and "then a commission was to go to find the right of the party; and "that being found, so that there was a record for him, thus "warranted, he is let in to interplead with the King; but if the "indorsement was special, then the proceeding was to be, "according to the indorsement, in any other court."

Let us take a special instance from the multiplicity of precedents and follow the proceedings upon it as briefly as possible. Suppose our petition is for the restitution of property. We have seen that in such a case the suppliant might proceed by a *monstrans de droit* or *traverse of office* as well as by petition. He has elected to pursue the latter remedy. The initial stages would be the same as in all other cases of petitions addressed to the King or to the King in Council; the petition would be indorsed by the King with a direction to the Chancellor that certain persons should be commissioned to enquire into the facts alleged in the petition and "do what was right or just." Then the commission would issue; but as the matters involved in such a petition were properly cognizable in a court of law, the Commissioners would not presume to finally dispose of the case. They would merely return into the Chancery their finding as to whether the suppliant had made a *primâ facie* case, so to speak, and if such were their finding, the Crown was then called upon to plead. This being done, the plea was entered upon the record, and the case sent from the Chancery to the King's Bench for hearing and determination. (*See Staundforde's Prarog. Reg.* 77 b.).

In the process of time, owing to legislation and other causes, all such petitions as were based on claims in respect of which there was ample remedy afforded by the courts fell into disuse, and thus the true petition of right became the sole remedy known by that name. The practice upon petitions remained however substantially the same until the present century, as will appear from the following summary taken from the 5th edition of Comyn's *Digest* (published in 1822) Vol. 7, p. 82 (D) 80, :—

"A suit by petition may be to the King in Parliament, or in "Chancery, or other court.

"If it be in Parliament, it may be established by Act of "Parliament, or pursued as in other cases. Staun. Prer. 72. b.

"Upon petition out of Parliament, or there (if it be not

" pursued as a statute) it shall be endorsed by the King *soit droit* " *fait*, and then delivered to the Chancellor. Staun. Prær. 73. a. " Mo. 639.

" Or a petition may have a special conclusion, that the King " command his justices of B.R. or C.B. And if it be indorsed " accordingly, it shall be pursued there. Staun. Prær. 73. a.

" If a petition be delivered to the Chancellor, there ought to " be an inquisition which finds the right of the party, before the " petition be depending, or there be any proceeding upon it. " Staun. Prær. 72 b. Except where the Attorney-General " confesses the suggestion. Skin. 608. Ld. Somers's Arg. 41.

" If the inquest finds for the King, there ought to be another " inquisition till a title be found for the party. Staun. Prær. " 73. a.

" If a petition be indorsed to B.R. or C.B., it may be " proceeded upon without an inquisition; for the indorsement " warrants it. Staun. Prær. 73. b.

" So, where no office is found to entitle the King, the party " may pursue a petition, without an inquisition for him. R. Mo. " 639.

" After a commission whereon a title is found for the party, " before he can intermeddle with the King, there ought to be a " writ to enquire of the King's title. Staun. Prær. 73. b.

" And this, in all cases where a petition was in Parliament, " or elsewhere, where land was in the King's hand, or granted to " another; for after issue found, upon petition, for the party, the " King shall be concluded for ever. Ibid.

" If the land be granted to another, there shall be a *Scire* " *facias* also against the patentee. Ibid.

" So, where a petition disaffirms the King's possession, there " ought to be four writs of search to the Treasurer and Chamber- " lains of the Exchequer. Mo. 639.

" But writs of search are not necessary, where the petition " affirms the King's possession; as, upon a petition of right of " dower. R. Mo. 639."

In some instances proceedings which afterwards took upon themselves distinctive features as common law remedies originally were instituted by petition of right. Notably is this the case with *scire facias* to repeal letters patent. This writ was formerly obtained upon a petition in the nature of a petition of right. (*See Earl of Kent's Case*, Hil. 21. Edw. III. fo. 47 pl. 68; also referred to as establishing this historical fact in 6 M.& Gr. 251 n. (a).).

*** The question as to whether a tort may be made the subject of a petition of right deserves more than a passing notice.

No doubt the opinions of the English courts in the cases of *Lord Canterbury v. The Queen* (12 L. J. Ch. 281), *Tobin v. The Queen* (33 L. J. C. P. 199) and *Feather v. The Queen* (6 B. & S. 257), *Thomas v. The Queen* (L. R. 10 Q. B. 31); of their Lordships of the Privy Council in the *Windsor and Annapolis Railway Case* decided in 1886 (11 Ap. Cas. 607) and of the Supreme Court of Canada in the cases of *The Queen v. McFarlane* (7 Can. S. C. R. 216), *The Queen v. McLeod* (8 Can. S. C. R. 1)

to the effect that, at common law, a petition of right will not lie against the Crown in respect of any wrongful act of the Crown or its agents, must be accepted as settling the question; but before these decisions it was by no means clear that a tort could not be made the subject of a petition of right. Indeed, in a note by the reporters to the case of *Smith v. Upton*, in 6 M. & Gr. 252-253, we find the following:—"A petition of right lies against the "Crown for a tort done by the King's officers for the King's "profit; as for a disturbance in the perception of tithes (*Prior "of Christchurch's case*, 31 Edw. I., 1 Rot. Parl. 59 b., and Ryley "*Plac. Parl.* 218); for tithes subtracted by the King's officers (8 "Edw. II., 1 Rot. Parl. 319, a); for a wrongful distress (*John Mow-"bray's case*, 33 Ed. I., 1 Rot. Parl. 163, a, and Ryley, 218); for "wool wrongfully taken to the King's use (*Michael de Harcla's "case*, 33 Ed. I., 1 Rot. Parl. 163 a. and Ryley 248); for wheat "seized under pretence of a royal Commission (14 Edw. II., 1 Rot. "Parl. 320 a); for trespasses to land (18 Edw. II., 1 Rot. Parl. "416)..... ....The general result of the cases seems "to be, that where the subject is entitled to a right which the "Crown withholds, or has suffered a wrong which the Crown "ought to redress, the remedy at common law is by petition of "right."

The cases immediately above cited were discussed from the Bench and by Counsel on the argument of the case of *Feather v. The Queen* (ubi sup.). Bovill (afterwards Lord Chief Justice of the Common Pleas and the father of the Imperial Petition of Right Act of 1860), for the suppliant contended, with much force, that petitions there under consideration were petitions of right as they are now understood. The judges (pp. 278-279), without advancing any reason for discriminating between the precedents as to claims arising *ex contractu* and those arising *ex delicto*, agreed that a petition of right would lie for a breach of contract, but denied that it would lie in respect of a tort. They further expressed themselves (p. 294) to be entirely in accord with a decision in the same sense upon this point of the Court of Common Pleas in the case of *Tobin v. The Queen* (ubi sup.).

The fallacy of attempting to discriminate between the sufficiency of the ancient precedents of petitions founded upon tort and of those based upon contract is more sharply emphasized in the judgment of the Court of Queen's Bench in the case of *Thomas v. The Queen* (ubi sup.). There the Court (at pages 42-43 of the report) rests its judgment on Lord Somers's opinion in the *Bankers' Case* that there were old precedents which conclusively demonstrated that petitions of right might be entertained when founded upon claims arising out of contract. In so many words the court says that Lord Somers expressed a "distinct and considered judgment that a petition of "right would lie against the Crown for a simple contract debt, such "as that for wages." Now as a matter of fact Lord Somers does not attempt to distinguish between the two classes of petitions in respect of their authority. His whole argument in this connection proceeds upon the opinion that all the petitions to be found in Ryley's *Placita Parliamentaria* (and they include both

classes of claims) are petitions of right in the modern parlance of the courts. (See 14 How., St. Tr. 47, 62 and 83.)

In speaking of the character of the petition in *Everle's case*, (Y. B. 33 Edw. I and Ryley, 251). Lord Somers says—(14 How. St. T. at p. 58):—

"It was urged that this petition was not a petition of right, "but of complaint against the King's officers. And to shew that "it was so, it was said, that if it had been a petition of right, it "must have had another indorsement, viz:—"*soit droit fait al "partie*," and then have been sent into Chancery; and that in "such cases the petition is the original upon which the proceeding "is; and that petitions of right must be so answered."

"As to this, in the first place, there needs not much labour "to shew that this was not a petition of complaint. It imports "nothing like it. The petitioner states his case; he prays what "he wanted, and what was necessary, and it was granted him; "that is, a warrant under the great seal, empowering the respec- "tive proper officers, the barons, to see if he had right, and the "treasurer, if it were so, to pay him his arrears. Nobody is "complained of in the petition, and nobody is blamed in the "answer; a writ is to go, the charter is to be seen, and justice is "to be done.

"In the second place, the answer given to this petition is a "very proper answer to a petition of right. And, therefore, there "was no ground to say that this was not a petition of right, "because the answer was not general, "soit droit fait."

"There are more petitions to the King in Ryley's *Placita "Parliamentaria* than in all the books which are printed; and "throughout the whole book there is not one in twenty which is "so answered; *and yet nothing is so plain as that these were "petitions of right*.

"It were endless to cite particulars, there being scarce a leaf "in the book which does not shew what I assert.

"And if more authorities were wanted, the bundles of "petitions in the Tower, which I have caused to be looked into, "are full of petitions of right, otherwise answered than in those "general words."

This opinion of Lord Somers quite coincides with the views expressed by Mr. Maitland and others (*Ante p.* 52) to the effect that the petitions such as he had under consideration in the *Bankers' case*, were not of the kind known at a later date as "Parliamentary petitions," but simply petitions addressed, as all petitions were then addressed, to the King or to the King in Council.

So much for a question which, owing to decisions in the recent cases before referred to, is now purely an academic one; but yet one which by reason of the new light which is now being thrown upon the constitutional history of medieval England by scholarly research may at any time become a very live one to the minds of practical lawyers.

*** *Petitions of Right in Equity* also require mention here.

In England during the last half-century the practice has sprung up of proceeding against the Crown for purely equitable relief by a petition of right. Such a sly clutch at the strong arm

of Equity which, according to the old maxim, always acts *in personam* and can only enforce its decrees by attachment of the person or sequestration, would never have been successful had the court been awake to the fact that by entertaining such petitions it was usurping a jurisdiction that was essentially anomalous and possibly abortive. It is quite true that the old authorities recognize that a suppliant might in certain cases obtain the aid of the Court of Chancery in pursuing his remedy against the Crown at common law,—for instance where the King had granted by letters patent to a stranger a rent-charge by wardship, the ward on coming of age might have brought his petition, or have obtained a *scire facias* from the Chancery to repeal the letters patent. (*See Bro. Abrid. tit. Pet. II*). It is to be observed that in such a case the proceeding is not to enforce an equitable claim against the Crown, but is merely one to obtain the helpful intervention of Chancery process towards expediting the proverbially slow relief at common law.

The first case where the subject sought relief against the Crown by a petition of right in equity was that of *Clayton v. The Attorney-General*, (1 Coop. temp. Cottenham, 97). There Lord Brougham declares (p. 120) that a petition for equitable relief was an unusual proceeding; and it is probable that it was at his suggestion that the character of the case was changed by the suppliant filing an ordinary Bill in Chancery, which was answered in the usual way by the Attorney General.

The only other reported case of a petition for equitable relief before *The Petitions of Right Act*, 1860, is that of *Taylor v. The Attorney-General*, reported in 8 Sim. p. 413. Since the Act quite a number of petitions of a similar character have been entertained in the Court of Chancery, apparently upon the assumption that the two cases just cited constitute sufficient precedent for such a course. These cases are collected in chronological order and fully discussed by Mr. Clode in chapter XI of his recent work on *Petitions of Right*. He says it is difficult to see upon what principles the Chancery Division has acted in entertaining such petitions, and he affirms that "these "cases should be regarded not so much as authorities showing for "what a petition of right *can* be brought but for what a petition "of right *has* been brought in this Division of the High Court."

In 1860 the Petition of Right Act, 23 & 24 Vict. c. 34 was passed to simplify the procedure in such matters in England.

It is not our intention to pursue the history of the subject in England at any greater length inasmuch as the modern doctrine and practice are fully discussed in Mr. Clode's excellent work before mentioned.

*** The subject of petition of right received very little attention from the courts or the legislatures in Canada until after the passing of the Imperial Act of 1860 dealing with the subject. This stimulated the minds of Canadian lawyers to place the Colonial prerogative in line with the latest legal reforms; and indeed we have, in so far as Dominion legislation at least is concerned, outstripped the Mother country in widening the liability of the Crown.

The Province of Ontario passed its first Petition of Right Act in the year 1872, (35 Vict. ch. XIII). By section 17, (re-enacted in R.S.O., 1877, c. 59, sec. 2), it was enacted that the relief to be sought by petition should comprehend "restitution of "any incorporeal right, or a return of lands or chattels, or a "payment of money, or damages, or otherwise." By section 21 of this Act, (re-enacted in R.S.O., 1877, c. 59, s. 20) it was provided that nothing therein contained should "prevent any "suppliant from proceeding as before the passing of this Act." By *The Statute Amendment Act*, 1887 (50 Vict. c. 7, s. 6), the last mentioned section was amended as follows:—"Nothing in "this Act contained shall prevent any suppliant from proceeding "as before the passing of this Act; nor entitle a subject to "proceed by petition of right in any case in which he would not "be so entitled under the Acts heretofore passed by the Parlia-"ment of the United Kingdom."

In the case of *The Muskoka Mill Company v. The Queen*, "(28 Grant, 577) which arose upon a petition of right against the Crown, *quoad* the Province, for damages for alleged tortions acts done by certain Provincial officers, Spragge, C. says:—"It is "contended that the language of our Provincial Act being "general as to the relief to be obtained, and being without the "qualification which is found in the Imperial Act, and also in "the Acts on the same subject of the Dominion Parliament, "gives relief in cases of wrong committed by officers of the "Crown, as well as relief which is given by, or existed before the "Imperial Act. In the interpretation clause in our Act the "word relief is made to comprehend every species of relief "claimed or prayed for in any such petition of right, whether a "restitution of any incorporeal right, or a return of lands or "chattels, or a payment of money, or damages or otherwise. The "same words are used however in the Imperial Act and in the "Dominion Acts; and I apprehend that such general words "would not suffice to make the Crown liable for a wrong com-"mitted by its officers. The maxim that the Crown can do no "wrong is applicable to cases of this nature."

The case of *The Canada Central Railway Company v. The Queen* (20 Grant, p. 273), will repay examination as it contains much valuable information concerning procedure by petition of right.

*** In 1873 the Province of British Columbia passed a Petition of Right Act in all essential respects the same as the English Act of 1860.

Under this Act, the case of *De Cosmos v. The Queen* (1 B. C. Rep. Pt. II, p. 26) was decided by Mr. Justice Gray. The suppliant had been appointed Special Agent for the Province, at Ottawa, by an order in council which was silent as to remunera-tion for his services. It was held that as the services were honorary and as there was no provision for payment of such services, he could not recover.

*** In 1875 the Legislature of the Province of Manitoba passed an Act, entitled *An Act to regulate proceedings against and by the Crown*, (38 Vict. c. 12). By this Act it was provided (sec. 1),

that a petition of right might be presented against the Crown, in right of the Province, in which, "the subject matter, or any part "thereof, would be cognizable by action or suit if the same were "a matter of dispute between subject and subject." It is also provided (sec. 2) that the petition shall be left with the Provincial Secretary, who shall forthwith submit the same for consideration to the Lieutenant-Governor, who in turn, shall, with all convenient dispatch, endorse thereon, if he thinks the matter should be litigated, "Let right be done;" if he thinks otherwise, "Refused." If a fiat is granted the petition when filed is to be taken, in a common law action, as the declaration, and in a suit in equity as the bill of complaint. A copy of the petition is left in the office of the Provincial Secretary, who is empowered to accept service thereof, upon which copy shall be endorsed, in the case of an action at law, "the defendant is to plead or demur within eight "days, otherwise judgment," or in the case of a suit in equity, "the defendant is to answer or demur hereto within twenty eight "days, otherwise the complaint will be taken as confessed." Then it is provided that the action or suit and all proceedings therein shall in all respects thereafter be governed by the same rules, principles and practice as in ordinary actions or suits between subject and subject.

*** In the year 1875, the Dominion Parliament passed an Act, entitled "*An Act to provide for the institution of suits against "the Crown by Petition of Right, and respecting procedure in "Crown suits.*" This was, in the main, an adoption of the English act of 1860. At the time of its passage the Supreme and Exchequer Courts of the Dominion had not been created, and jurisdiction to try suits by petition against the Crown in right of the Dominion was given therein to the superior courts of the several Provinces. In the following session of Parliament the establishment of the two federal courts was provided for, and *The Petition of Right Act, Canada*, 1875, was repealed by 39 Vict., c. 27, which gave jurisdiction in respect of petitions of right in Dominion matters to the Exchequer Court.

The last mentioned Act was, in substance, reproduced in Chapter 136 of *The Revised Statutes of Canada*. By subsequent legislation (50–51 Vict. ch. 16) the integrity of this chapter has been sorely shaken, its provisions in some instances being repealed and in others bodily transferred to independent Acts. However, as some important cases have been decided under the Act previous to the year 1887, it has been considered advisable to print it entire in this work. It will be found in a subsequent part hereof.

The following cases of importance have been decided under 39 Vict. c. 27:—*Chevrier v. the Queen*, 4 Can. S. C. R., 1; *O'Brien v. The Queen*, 4 Can. S. C. R., 529; *The Queen v. Robertson*, 6 Can. S. C. R., 52; *The Queen v. Doutre*, 6 Can. S. C. R., 342; *Belleau v. The Queen*, 7 Can. S. C. R., 53; *Jones v. The Queen*, 7 Can. S. C. R., 570; *Tylee v. The Queen*, 7 Can. S. C. R., 651; *Wood v. The Queen*, 7 Can. S. C. R., 634; *Isbester v. The Queen*, 7 Can. S. C. R., 696; *The Queen v. McFarlane*, 7 Can. S. C. R., 216; *The Queen v. McLeod*, 8 Can. S. C. R., 1; *The*

Queen v. MacLean, 8 Can. S. C. R., 210; *The Queen v. Smith*, 10 Can. S. C. R., 1; *Windsor & Annapolis Ry. Co. v. The Queen*, 10 *Can. S. C. R.*, 335; also L. R., 11 A. C., 607, *The Queen v. Dunn*, 11 Can. S. C. R., 385; *The Queen v. McQueen*, 16 Can. S. C. R., 1; *The Merchants Bank v. The Queen*, 1 Ex. C. R., 1; *Clarke v. The Queen*, 1 Ex. C. R., 182. Want of space and the knowledge that the reports of these cases are in the hands of the profession generally throughout the Dominion induces to omit a review of them here.

In 1887 the Exchequer Court of Canada was erected into a tribunal separate and apart from the Supreme Court of Canada. By sec. 23 of *The Exchequer Court Act* of that year (which, as amended by subsequent enactments, is printed in full in a later part of this work) it is provided that, "any claim against the "Crown may be prosecuted by petition of right, or may be re- "ferred to the court by the Head of the Department in connec- "tion with the administration of which the claim arises, and if "any such claim is so referred no *fiat* shall be given on any peti- "tion of right in respect thereof."

Sections 15 and 16 deal with the exclusive jurisdiction of the Court; and it is under sub-section (c) of section 16 that the most important cases have been decided. This clause gives a remedy to the subject against the Crown for any claim arising out of any death or injury to the person, resulting from negligence of any officer or servant of the Crown, while acting within the scope of his duties or employment. The extent to which the Sovereign's ancient immunity from actions of this character is affected by such legislation is fully discussed by Mr. Justice Burbidge in his able judgments in *The City of Quebec v. The Queen*, (2 Ex. C. R., 256) and *Lavoie v. The Queen*, (3 Ex. C. R., 96). The above cited section has also been discussed in *Brady v. The Queen*, (2 Ex. C. R., 273); *Gilchrist v. The Queen*, (2 Ex. C. R., 300); *Martin v. The Queen*, (2 Ex. C. R., 328); *Leprohon v. The Queen*, (3 Ex. C. R., 100); *Filion v. The Queen*, (3 Ex. C. R., 134). Cases upon other sections of *The Exchequer Court Act* will be found in the annotations to the Act in a subsequent part of this work.

*** There would seem to be no doubt that during the period which elapsed between the date of the establishment of the first civil courts of justice by Governor Murray, on the 17th of September, 1764, and the passage of the *Quebec Act*, 1774, the remedy by petition of right was open to the subjects of the Crown within the Province of Quebec in common with all their other rights and remedies under English law.

In the case of *Harvey v. Lord Aylmer*, decided in the Court of King's Bench, at Quebec, in the year 1833, (Stuart's Rep. p. 542) it was contended by counsel for plaintiff that under the old law of France, which he submitted, governed such matters in the Province of Quebec, the King was answerable in the courts for wrongs of a private nature done to his subjects. The issues in the case did not call for a consideration of this question, and, therefore, there was no judicial pronouncement upon it. In *Laporte v. Les Principaux Officiers de l'Artillerie* (decided on ap-

peal in 1857, *see* 7 L. C. R., 486) the Superior Court expressed the opinion that the subject's remedy against the Crown by petition of right obtained as well in the Province of Quebec as in England, and that the plaintiff being the owner of certain real property in dispute in that case, might have interrupted prescription by the Crown by a petition of right. The real issue in the case was whether the plaintiff could sustain a petitory action for the recovery of a tract of land taken and used in the construction and fortifications of the City of Quebec, and this issue was decided against him. Aylwin, J., one of the judges on appeal, however, appeared to share the opinion of the judges below respecting his remedy by petition of right.

In the year 1883 the Legislature of the Province of Quebec passed a Petition of Right Act, giving the subject a remedy whenever he seeks relief against the Government of the Province in respect of a revendication of moveable or immoveable property, or a claim for the payment of money on an alleged contract, or for damages, or otherwise. This Act is now to be found in *The Revised Statutes of the Province of Quebec* under Art. 5976.

INTEREST.

As a matter of convenience it was thought advisable to submit a few observations with respect to the question of interest against the Crown in Canada.

The rule is now well established that no interest is allowable against the Crown, except when made payable by statute or by contract. This principle has been discussed and finally settled by the Court of Appeal in England, in the case of *re Gosman* (L. R. 17 Ch. D. 771; 50 L. J. Ch. 624; 45 L. T. 267; 29 W. R. 793).

Further no interest will be allowed against the Crown on the amount representing the loss of profits resulting from the breach of a Government contract. *The Queen v. McLean, et al,* (12 May, 1885, Cas. Dig. p. 399.)

Section 29 of *The Expropriation Act* (52 Viet. ch. 13) provides for the payment of interest by the Crown on the compensation money from the time the land was acquired, taken or injuriously affected to the date when the judgment is given; but no person to whom has been tendered a sum equal to or greater than the amount to which the court finds him entitled shall be allowed any interest on such compensation money for any time subsequent to the date of such tender. Section 30 of the same Act provides for the class of cases in which interest may be refused or diminished and reads as follows:—

"If the court is of opinion that the delay in the final "determination of any such matter is attributable in whole or in "part to any person entitled to such compensation money or any "part thereof, or that such person has not, upon demand made "therefor, furnished to the Minister within a reasonable time a "true statement of the particulars mentioned in section twenty-"five, it may, for the whole or any portion of the time for which

"he would otherwise be entitled to interest, refuse to allow him "interest, or it may allow the same at any rate less than six per "centum per annum that to it appears just."

With reference to interest payable after judgment, sec. 4 of 52 Vict. ch. 38, amending *The Exchequer Court Act*, provides that the Minister of Finance and Receiver General may allow and pay to any person entitled by judgment of the court to any moneys or costs, interest thereon at a rate not exceeding four per cent. from the date of such judgment until such moneys or costs are paid.

The practice followed by the Department up to the present time appears to be to pay interest in the class of cases mentioned in *The Expropriation Act* as above cited.

Mr. Justice Taschereau, sitting on Appeal from the Award of the Official Arbitrators and acting as Judge of the Exchequer Court prior to 50-51 Vict. ch. 16, decided, *in re Paradis v. The Queen*, (1. Ex. C. R. p. 191) that under the law of the Province of Quebec, where interest has been allowed on an Award by the Official Arbitrators (1) a claim for loss of profits or rent cannot be entertained by the Court on Appeal, as such interest must be regarded as representing the profits. *Re Fouché—Lepelletier*, (Dal. 84. 3. 69) and *re Pechwerty* (Dal. 84. 5. 485, No. 42) referred to.

Although interest is not allowable against the Crown with the exception of the class of cases above mentioned, it is clear that the Crown may recover interest against the subject in all the cases in which interest is made payable between subject and subject. *The Queen v. The Grand Trunk Railway Co.*, 2 Ex. C. R. p. 132.

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(1) The Act respecting the Official Arbitrators, ch. 40 of the R. S. C., has been repealed by 50-51 Vict. ch. 16.

The Exchequer Court Act.

(50-51 Vict., ch. 16.)

AND

The Supreme and Exchequer Courts Act.

(R.S.C. ch. 135, in part.)

THE EXCHEQUER COURT ACT.

50-51 Victoria.

Chap. 16.

An Act to amend "The Supreme and Exchequer Courts Act," and to make better provision for the Trial of Claims against the Crown.

[*Assented to 23rd June*, 1887.]

This Act came into force on the 1st day of October, 1887, under the provisions of section 60 hereof, by the issue of a proclamation bearing the same date and published in the Canada Gazette on the same day.

The different statutes dealing with the constitution of the Exchequer Court since its origin up to the passing of 50-51 Vict. ch. 16, are as follows, viz:—

(1). *The Supreme and Exchequer Court Act* (38 Vict. ch. 11) by which a Court of Exchequer was first established in Canada.

(2). *An Act to make further provision in regard to the Supreme Court and the Exchequer Court, of Canada*, (39 Vict. ch. 26).

(3). *An Act to amend the Act to make further provision in regard to the Supreme and Exchequer Courts*, (40 Vict. ch. 22).

(4). *The Supreme Court Amendment Act of* 1879, (42 Vict. ch. 39).

(5). *The Supreme and Exchequer Court Amendment Act*, 1880, (43 Vict. ch. 34).

(6). *The Supreme and Exchequer Courts Act* (R. S. C. ch. 135), by which the above mentioned Acts were repealed and consolidated within the meaning of section 8 of 49 Vict. ch. 6. A somewhat large portion of the Act is still applicable to the Exchequer Court and will be found in this book following *The Exchequer Court Act*.

The introduction of *The Exchequer Court Act* (50-51 Vict. ch. 16) marks a new era in the history of the court. By the passing of this Act the court was entirely re-organized and its jurisdiction materially enlarged. An important change made by this statute was the taking away from the Judges of the Supreme Court of Canada all original Exchequer Court jurisdiction and the transferring of the same to one single judge, called the Judge of the Exchequer Court of Canada, duly appointed under the Act; the court from that period constituted a tribunal entirely distinct from that of the Supreme Court of Canada.

The Exchequer Court Act (50-51 Vict. ch. 16) has been amended by the following Acts, viz:—

(1). By 52 Vict. ch. 38. The effect of this Act, stated in a summary way, has been to enlarge the scope and the nature of the References to the registrar or other officers of the court; to give the judge larger and more definite powers in respect of making Rules of Court as well in connection with *The Exchequer Court Act* as with any Act giving jurisdiction to the Court. The Act further provides for undertakings to be given by the Crown in cases of expropriation, the effect being to materially reduce the compensation in such cases, and finally makes provision for the payment by the Crown of interest after judgment.

(2). By 53 Vict. ch. 35, which was passed to make better provisions in respect of appeals from this court to the Supreme Court of Canada.

(3). By 54-55 Vict. ch. 26. By this Act the jurisdiction respecting patents of invention, copyrights, trade-marks or industrial designs, patents of public lands and interpleaders in certain cases, is given to the Exchequer Court. The same Act deals also with certain considerations to be taken into account in expropriation matters and finally makes provision for appeals to the Supreme Court of Canada with regard to the subject matter of the Act and determines upon what part of the Supreme Court list an Exchequer Court appeal shall be entered.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

INTERPRETATION.

Interpretation—Supreme Court—Exchequer Court—The Crown—Public Lands—Patent—Letters Patent—Short Title.

1. In this Act, unless the context otherwise requires,—

(*a.*) The expression "The Supreme Court" means the Supreme Court of Canada;

(*b.*) The expression "The Exchequer Court" or "The Court" means the Exchequer Court of Canada;

(*c.*) The expression "The Crown" means the Crown in the right or interest of the Dominion of Canada.

To the above interpretation clauses of 50-51 Vict. ch. 16 are added, by 54-55 Vict. ch. 26, *An Act further to amend the Exchequer Court Act*, and assented to on the 30th September, 1891, the following enactments coming under the above head or title:—

[1. This Act (a) may be cited as "*The Exchequer Court Amendment Act*, 1891."

2. In this Act, (a) unless the context otherwise requires,—

(*a.*) The expression "public lands" extends to and includes Dominion lands, Ordinance or Admiralty lands, Indian lands, and all other lands which are the property of Canada or which the Government of Canada have power to dispose of;

(*b.*) The expression "letters patent" or "patent" when used with respect to public lands, includes any instrument by which such lands or any interest therein may be granted or conveyed.]

The Act to amend the law respecting the Exchequer Court of Canada, 52 Vict. ch. 38, and this Act (50-51 Vict. ch. 16) may together be cited as *The Exchequer Court Act* in pursuance of section 5 of 52 Vict. ch. 38, which reads as follows:—

[The Act herein first mentioned and this Act (b) may together be cited as "*The Exchequer Court Act.*"]

(*a.*) 54-55 Vict. ch. 26, *An Act further to amend the Exchequer Court Act.*

(*b.*) 52 Vict. ch. 38 and 50-51 Vict., ch. 16.

THE EXCHEQUER COURT.

Exchequer Court continued.

2. The Court of Exchequer, now existing under the name of "The Exchequer Court of Canada," is hereby continued under such name, and shall continue to be a court of record. (R. S. C. ch. 135, sec. 3).*

This court was established under the provisions of section 101 of *The British North America Act*, 1867, which vested in the Dominion Parliament the right to establish courts for the better administration of the laws of Canada.

Constitution of Court.

3. The Exchequer Court shall consist of one judge, who shall be appointed by the Governor in Council by letters patent under the Great Seal: (New,—R. S. C. ch. 135, sec. 6)

Who may be Appointed Judge.

2. Any person may be appointed a judge of the court who is or has been a judge of a superior or county court of any of the Provinces of Canada, or a barrister or advocate of at least ten years' standing at the bar of any of the said Provinces: (The equivalent of R. S. C. ch. 135, sec. 4 (2) with addition "County Court.")

To hold no other Office.

3. The judge of the court shall not hold any other office of emolument either under the Government of Canada or under the Government of any Province of Canada: (R. S. C. ch. 135, sec. 4 (4).)

Residence.

4. The judge of the court shall reside at Ottawa or within five miles thereof: (R. S. C. ch. 135, sec. 4. (5.)

Provision in Case of Sickness.

5. In case of sickness or absence from Canada of the Judge of the court, the Governor in Council may specially appoint some other person having the qualifications mentioned in subsection two of this section, who shall be sworn to the faithful performance of the duties of his office, and shall have all the powers incident thereto during the sickness or absence from Canada of the judge of the court: (New.)

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*The references between brackets at the end of each section of the Act indicate where the enactment comes from. The Act in a large measure consists of legislation taken respectively from chapters 40, 135 and 136 of the Revised Statutes of Canada, as well as from some provisions of the Revised Statutes of the United States, with necessary modifications, and some legislation is entirely new.

Provision if Judge is Interested.

["6. The judge of the court shall not adjudicate upon any case in which he is interested;

"The Governor in Council may, upon the application of the judge of the court, appoint some other person having the qualifications mentioned in sub-section two of this section to act as judge *pro hac vice* in relation to any case at any time pending in the Exchequer Court, and such person shall be sworn to the faithful performance of his duties, and shall, in relation to such case, have all the powers of the judge of the Exchequer Court."] (New.)

As amended by 51-55 Vict. ch. 26.—The amended subsection 6 of this section provides that the judge of the court, alone, is to make the application for the appointment of a judge *ad hoc*, whilst under the old section the application could be made either "by the judge or by any party in the case." The amendment covers also some unimportant alterations and curtailment of the old sections.

Term of Office.

4. The judge of the court shall hold office during good behavior, but shall be removable by the Governor General on address of the Senate and House of Commons. (R. S. C. ch. 135, sec. 5.)

Salary of the Judge—Travelling Expenses.

5. There shall be paid and payable out of the Consolidated Revenue Fund of Canada, the yearly sum of six thousand dollars as and for the salary of the said judge, which sum shall be paid, free and clear of all deductions whatsoever, by monthly instalments; the first payment shall be made *pro rata* on the first day of the month which occurs next after the appointment of the judge; and if the 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. ch. 135, sec. 7.)

2. There shall be paid to the said judge for travelling allowances his moving expenses and the sum of five dollars for each day during which he is attending as such judge any court at any place other than the city of Ottawa. (New.)

Retiring Allowance may be Granted—Amount.

6. If the judge has continued in the office of judge of the court for fifteen years or upwards, or in the said office and that of judge of one or more of the superior courts, or of the courts of vice-admiralty, or the county courts, in any of the Provinces of Canada, for periods amounting together to fifteen years or upwards; or becomes afflicted with a permanent infirmity, disabling him from the due execution of his office; and if such judge resigns his office, Her Majesty may, by letters patent under

the Great Seal of Canada, reciting such period of office or such permanent infirmity, grant unto such judge an annuity equal to two-thirds of his salary as such judge at the time of his resignation and to commence immediately after his resignation and to continue thenceforth during his natural life, and to be payable by monthly instalments, and *pro rata* for any period less than a year during such continuance, out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada. (R. S. C. ch. 135, sec. 7, with addition "county courts.")

OATH OF OFFICE.

Judge to take Oath of Office—Form of Oath.

7. The judge of the Exchequer Court, shall previously to entering upon the duties of his office, as such judge, take an oath in the form following :—

"I do solemnly and sincerely promise and swear that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as judge of the Exchequer Court of Canada: So help me God." (R. S. C. ch. 135, sec. 9.)

By Whom Administered.

8. Such oath shall be administered before the Governor General or the person administering the Government of Canada, or such person or persons as he appoints. (R. S. C. ch. 135, sec. 10.)

REGISTRAR AND OTHER OFFICERS.

Registrar may be Appointed.—And other Officers.

9. The Governor in Council may, by an instrument under the Great Seal, appoint a fit and proper person, being a barrister of at least five years' standing, to be the registrar of the Exchequer Court, and such registrar shall hold office during pleasure, shall reside and keep an office at the city of Ottawa, and shall be paid a salary of two thousand dollars per annum; and the Governor in Council may, from time to time, appoint such other clerks, stenographers and servants of the Exchequer Court, as are necessary,—all of whom shall hold office during pleasure, and shall be paid such salaries as the Governor in Council determines. (R. S. C. ch. 135, sec. 11, the word "stenographers" added.)

R. S. C., cc. 17 and 18 to Apply.

10. The provisions of "*The Civil Service Act*" and of "*The Civil Service Superannuation Act*" shall, so far as applicable, extend and apply to such registrar, clerks, stenographers and servants at the seat of Government. (R. S. C. ch. 135, sec. 14.)

OFFICIAL REFEREES.

Official Arbitrators to be Referees.—When Referees Shall be Appointed.—Duties of Referees.

11. Every official arbitrator now holding office shall, as such official arbitrator, be an official referee under this Act, and shall not be affected hereby in respect of salary, travelling allowance or any right or privilege under "*The Civil Service Superannuation Act*," but no vacancy hereafter occurring in the office of official arbitrator shall be filled.

2. As vacancies occur in the office of official arbitrators, the Governor in Council may appoint official referees of the Exchequer Court, not exceeding three in number, who shall be paid such fees and travelling allowances as the Governor in Council prescribes:

3. The official arbitrators as official referees and such official referees shall perform such duties as the Exchequer Court by general or special rules or orders directs. (New.)

BARRISTERS AND ATTORNEYS.

Barristers and Advocates.

12. All persons who are barristers or advocates in any of the Provinces may practice as barristers, advocates and counsel in the Exchequer Court. (R. S. C. ch. 135, sec. 16.)

Attorneys and Solicitors.

13. All persons who are attorneys or solicitors of the superior courts in any of the Provinces, may practice as attorneys, solicitors and proctors in the Exchequer Court. (R. S. C. ch. 135, sec. 17.)

Where a solicitor or counsel of one of the parties to a suit has put his name as a witness to a deed between the parties he ceases, in respect of the execution of the instrument, to be clothed with the character of a solicitor or counsel and is bound to disclose all that passed at the time relating to such execution. *Magee v. The Queen*, 3 Ex. C. R. 305.

To be Officers of the Court.

14. All persons who may practice as barristers, advocates, counsel, attorneys, solicitors or proctors in the Exchequer Court, shall be officers of such court. (R. S. C. ch. 135, sec. 18.)

See Rule 264, and notes thereunder, respecting the appointment of agents and election of domicile by solicitors and attorneys practising before the Exchequer Court.

JURISDICTION.

Exclusive Original Jurisdiction of the Court.

15. The Exchequer Court shall have exclusive original jurisdiction in all cases in which demand is made or relief sought in respect of any matter which might, in England, be the subject of a suit or action against the Crown, and for greater certainty, but not so as to restrict the generality of the foregoing terms, it shall have exclusive original jurisdiction in all cases in which the land goods or money of the subject are in the possession of the Crown, or in which the claim arises out of a contract entered into by or on behalf of the Crown. (R. S. C. ch. 135, sec. 75 (2) with a specific statement of cases in which a petition of right will lie.)

The practice and procedure relating to petition of right in England is now regulated by *The Petitions of Right Act*, 1860, (23-24 Vict. (U.K.) ch. 34). Section 18 thereof provides, however, that nothing contained in that Act shall prevent a suppliant from proceeding as before the passing of the same. The Act regulates the practice, but not the law; and therefore the jurisprudence established prior to the passing of that statute has not been interfered with by this new legislation.

In view of the above section (sec. 15 of 50-51 Vict. ch. 16.) giving the court exclusive original jurisdiction in all cases in which demand is made or *relief* sought in respect of any matter which might in England be the subject of a petition of right, it would be well to give here the interpretation of the word *relief* as understood in England. Section 16 of the English petition of right Act gives us the following definition:—"The "word *relief* shall comprehend every species of relief claimed or prayed "for in any such petition of right, whether a restitution of any incorporeal "right, or a return of lands or chattels, or a payment of money or damages "or otherwise."

By reference to subsection (c) of sec. 2 of *The Petition of Right Act* (R.S.C. ch. 136,) it will be found that the definition of the word "relief" in the Canadian Act has been taken from the Imperial statute.

At page 66 of Mr. Clode's valuable work on *Petition of Right* will be found an enumeration of the classes of cases in which a petition of right will lie in England. He divides these cases into four classes, viz:—

(1). "Claims for the restitution of property wrongfully taken and "detained by the Crown; (2). Claims arising out of some contract made "between the Crown and a subject; (3). those in which certain equitable "claims have been sought to be enforced against the Crown; and (4), "lastly, those in which certain claims, made enforceable by this means, "by statute, were prosecuted."

At pages 62-63 of the same work, he further says that:—"The injury "upon which a suppliant bases his claim must be a legal one, and further "that a petition of right will not lie for a claim in the nature of a tort. "The true test by which it can be decided whether any particular claim "of a subject against the Crown can be maintained is not its legal "sufficiency considered as a claim against a subject, but the foundation in "precedent which it has, considered as a claim against the Crown."

For the origin of the remedy by petition of right, the liability of the Crown thereunder from the earliest times and a brief discussion of some of the leading cases on the subject, *see* Introduction to this book, *ante* p. 48 *et seq*.

JURISPRUDENCE :—

1. A petition of right has been held by the courts to lie against the Crown in the following cases :—

(*a*). For the restitution of real property in the possession of the Crown. *Feather v. The Queen*, 6 B & S, 294.

(*b*). For the recovery of an incorporeal hereditament from the Crown. *James v. The Queen*, L. R. 17 Eq. 502.

(*c*). For the recovery of specific chattel, or the value thereof, if it had been converted to the King's use. *Tobin v. The Queen*, 16 C. B.N.S. 358 ; *Feather v. The Queen*, 6 B & S 257.

(*d*). For the recovery of money due upon a legacy under the will of a former sovereign, where the personal estate of the latter is in the present King's hands. *Ryves v. The Duke of Wellington*, 9 Beav. 579 ; *Ellis. v. Earl Gray*, 6 Sim. 220.

(*e*). For the recovery of money paid by mistake for stamp duty on the probate of a will. *Executors of Perceival v. The Queen*, 33 L. J. (Ex.) 289.

(*f*). For the recovery of accumulated rents of property which in default of next of kin had passed into the hands of the Crown. *In re Gosman*, L. R. 15, Ch. D. 67 ; this case also dealt with the question of interest against the Crown. See Introduction p. 62.

(*g*). For the recovery of a civil servant's salary. *Birke v. The Queen*, *Times*, 29th May, 1869.

(*h*). For breach of contract resulting in unliquidated damages. *Thomas v. The Queen*, L. R. 10 Q. B. 31.

(*i*). Generally, for damages for breach of contract *Feather v. The Queen*, 6 B & S 294 ; *Windsor & Annapolis Ry. Co. v. The Queen, and The Western Counties Ry. Co.*, L. R. 11 App. Cas. 607 ; *Churchward v. The Queen*, L. R. 1 Q. B. 186 ; *Tobin v. The Queen*, 16 C. B., (N.S.) 310 ; *Kinlock v. The Queen*, *Times*, March 22nd, 1885 ; *De Dohsé v. The Queen*, *Times*, Nov. 25th, 1886 ; *Eyre v. The Queen*, *Times*, June 8th, 1886 ; *Thomas v. The Queen*, L. R. 10 Q. B. 31 ; *Farnell v. Bowman*, 12 App. Cas. 649 ; *The Attorney-General of Straits Settlement v Wemyss*, 13 App. Cas. 192. This last case is also authority for the recovery of damages arising upon torts, under the laws of that Colony.

(*j*). For the recovery of counsel fees. *Doutre v. The Queen*, 6 Can. S. C. R. 342.

(*k*). For breach of contract, and for the amount of extra work done under a contract. *Isbester v. The Queen*, 7 Can. S. C. R. 696.

(*l*). For breach of a contract respecting parliamentary and departmental printing. *McLean v. The Queen*, 8 Can. S. C. R. 210.

(*m*). For the loss of fishing privileges in a river under a license from the Minister of Marine and Fisheries. *Robertson v. The Queen*, 6 Can. S. C. R. 52.

(*n*). For the restitution of lands and accumulated rents and profits thereof while in the hands of the Crown. *Tylee v. The Queen*, 7 Can. S. C. R. 651.

(*o*). For the restitution of goods improperly seized by officers of the Crown for alleged non-payment of inland revenue tolls. *Merchants Bank v. The Queen*, 1 Ex C. R. 1.

(*p*). For the breach of contract whether such breach is occasioned by the acts or omissions of the Crown officials. *Windsor & Annapolis Ry. Co. v. The Queen*, 11 App. Cas. 607.

(*q*). For the assertion of any title under sec. 29 of 7 Vict. ch. 2. *McQueen v. The Queen*, 16 Can. S. C. R. 1.

2. *Petition of Right Damages or loss from injury to property.*—Since 1887, when *The Exchequer Court Act* was passed, a petition of right will lie for damages or loss resulting from an injury to property on a public work resulting from the negligence of an officer of the Crown acting within the scope of his duty; the subject's remedy being before that date limited to a submission of his claim to the Official Arbitrators, with, in certain cases after 1879, an appeal to the Exchequer Court, and thence to the Supreme Court of Canada. *City of Quebec v. The Queen*, 3 Ex. C.R. 161; 24 Can. S. C. R.—

3. *Injury to Person—Negligence—Liability.*—A petition of right will lie against the Crown, under sec.16 of 50-51 Vict. ch. 16, for the death or injury to the person or to property on any public work, resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment. *Filion v. The Queen*, 4 Ex. C. R. 134; *City of Quebec v. The Queen*, 2 Ex. C. R. 252; 24 Can. S. C. R.—; both judgments were affirmed on appeal to the Supreme Court of Canada. *Martial v. The Queen*, 3 Ex. C. R. 118.

4. *Petition of Right—Breach of Warranty—Sale of Personal Chattels.—Quære*: Will an action by petition or on reference lie in the Exchequer Court against the Crown for unliquidated damages for breach of warranty implied in a sale of personal chattels? *Saint Catharines Milling & Lumber Co. v. The Queen*, 2 Ex. C. R. 202.

5. *Petition of Right—Injury to Goods or Animals on Government Railway.*—A petition of right will lie for the recovery of damages resulting from the loss or injury to goods or animals carried by a Government railway, occasioned by the negligence of the persons in charge of the train. *Lavoie v. The Queen*, 3 Ex. C. R. 96.

6 *Petition of Right—Animal killed on I. C. Ry.—Liability of Crown.*—A petition of right will lie against the Crown, under R. S. C ch 38, sec. 23 and 50-51 Vict.. ch. 16, sec. 16 (*c*), for the recovery of damages resulting from the loss of an animal killed on the I. C. Ry, occasioned by the negligence of the engineer of the train. *Gilchrist v. The Queen*, 2 Ex. C. R. 300.

7. A petition of right will not lie against the Crown in the following cases:—

(*a*). To enforce a contract between the Crown and an officer of its military service. *Mitchell v. The Queen*, 6 Times L. R. 181.

(*b*). To recover a pension from the Government after the Commissioners of the Treasury have, under the Acts regulating the superannuation allowances of the civil service, decided adversely to such action. *Cooper v. The Queen*, 14 Ch. D. 311; 49 L. J. Ch. 490.

(*c*). For an inquiry into the circumstances attending the dismissal of an officer from the army. *In re Tufnell*, 3 Ch. D. 164; 45 L. J. Ch. 731.

(*d*). To compel the Crown to grant a patent of lands. *Clarke v. The Queen*, 1 Ex. C. R. 182.

(*e*). For tort or for a claim based upon an alleged fraud imputing to the Crown fraudulent misconduct of its servants. *Jones v. The Queen*, 7 Can. S. C. R. 570.

(*f*). For damages occasioned by the negligence of the Crown's servant to the property of an individual using a public work. *McFarlane v. The Queen*, 7 Can. S. C. R. 216; *Tobin v. The Queen*, 16 C. B. (N.S.) 310; but now see *City of Quebec v. The Queen*, 2 Ex. C. R. 252 and *Filion v. The Queen*, 4 Ex. C. R. 134; 24 Can. S. C. R.

(*g*). For damages resulting from the negligence of the Crown's servants on a Government railway. *McLeod v. The Queen*, 8 Can. S. C. R.

1; but now see *Gilchrist v. The Queen*, 2 Ex. C. R. 300, and *Larroie v. The Queen*, 3 Ex. C. R. 116.

(*h*). For the breach [illegible] contract which is not made in conformity with sta[illegible] enactments. *Wood v. The Queen*, 7 Can. S. C. R. 634.

(*i*). For damages for the destruction of a house by fire arising from the negligence of the servants of the Crown. *Lord Canterbury v. The Queen*, 12 L. J., Ch. 281.

(*j*). For the wrongful acts of a naval officer employed in the suppression of the Slave Trade. *Tobin v. The Queen*, 33 L. J., C. P. 199.

(*k*). For damages for an alleged infring[illegible] by the Lords of the Admiralty of a patent of invention granted to the suppliant by the Crown. *Feather v. The Queen*, 6 B. & S. 257.

(*l*). For damages arising upon torts in general. See cases *supra* and *The Queen v. McFarlane*, 7 Can. S. C. R. 216; *McLeod v. The Queen*, 8 Can. S. C. R. 1; *City of Quebec v. The Queen*, 2 Ex. C. R. 252. For American cases see *Langford v. The United States*, 101 U. S. R. 341.

(*m*). For injuries sustained by one who falls upon a step of a public building (Post Office) by reason of ice which had formed there and which the caretaker of the building, employed by the Minister of Public Works, had failed to remove or to cover with sand or ashes. *Leprohon v. The Queen*, 4 Ex. C. R. 100.

(*n*). For salvage services rendered to a steamship belonging to the Dominion Government. *Comette v. The Queen*, 3 Ex. C. R. 82.

(*o*). For the recovery of the value of goods stolen while in a Custom examining warehouse; the subject has however his recourse against the officer through whose personal act or negligence the loss happens. *Corse v. The Queen*, 3 Ex. C. R. 13.

(*p*). For unliquidated damages for a trespass. *Tobin v. The Queen*, 16 C. B. (N. S.) 310; 33 L. J. C. P. 199.

(*q*). For municipal taxes assessed upon real property belonging to the Dominion of Canada. *City of Quebec v. The Queen*, 2 Ex. C. R. 450; *Quirt v. The Queen*, 19 Can. S. C. R. 510.

(*r*). For interest on the amount found in favour of a suppliant for loss of profits resulting from the breach of a Government contract. *The Queen v. McLean*, Cassels' Digest p. 399.

8. *Crown—Common Carrier—Liability.*—The Crown is not a common carrier and a petition of right against it as such will not lie. *McFarlane v. The Queen*, 7 Can. S. C. R. 216; *McLeod v. The Queen*, 8 Can. S. C. R. 1; but see *Farnell v. Bowman*, 12 App. Cas. 649 and *Larroie v. The Queen*, 3 Ex. C. R. 96.

Exclusive original jurisdiction of the court.

16. The Exchequer Court shall also have exclusive original jurisdiction to hear and determine the following matters:—

(*a*.) Every claim against the C[illegible]n for property taken for any public purpose; (R. S. C. ch. [illegible] sec. .)

(*b*.) Every claim against the C[illegible]wn for damage to property injuriously affected by the construction of any public work; (R. S. C. ch. 40, sec. 6.)

(*c*.) Every claim against the Crown arising out of any death or injury to the person or to property on any public work, resulting from the negligence of any officer or servant of the Crown, while acting within the scope of his duties or employment; (Ibid.)

(*d*) Every claim against the Crown arising under any law of Canada or any regulation made by the Governor in Council; (R. S. U. S. sec. 1059 (1).)

(*e*). Every set off, counter claim, claim for damages, whether liquidated or unliquidated, or other demand whatsoever, on the part of the Crown against any person making claim against the Crown. (Ibid, sec. 1059 (2).)

1. *Liability of Crown for injury to property—Negligence of servant of the Crown.*—Under section 16 (c) of 50-51 Vict. ch. 16, the Crown is liable in damages for any death or injury to the person or to property on any public work resulting from the negligence of any officer or servant of the Crown, while acting within the scope of his duties or employment. *City of Quebec v. The Queen*, 2 Ex. C. R. 252; 24 Can. S. C. R.

2. *Crown's immunity for personal negligence.*—The Crown's immunity from liability for personal negligence is in no way altered by section 16 (c) of 50-51 Vict. ch. 16.—*Ibid.*

3. *Negligence of Crown's servant, liability.*—A. alleged in his petition that while driving slowly along a road in the Rocky Mountain Park, N. W. T., his buggy came in contact with a wire stretched across the road, whereby he was thrown from the buggy to the ground and sustained severe bodily injury. He further alleged that the Rocky Mountain Park is a public work of Canada under the control of the Minister of the Interior and the Governor in Council, who had appointed one S. superintendent thereof; that S. had notice of the obstruction to travel caused by the wire and had negligently failed to remove it, contrary to his duty in that behalf and that the Crown was liable in damages for the injuries so received by him. And the court held that the petition disclosed a claim against the Crown arising out of an injury to the person on a public work resulting from the negligence of an officer or servant of the Crown while acting within the scope of his duties and employment, and therefore came within the meaning of 50-51 Vict. c. 16, s. 16 (c), which provides a remedy in such cases. *Brady v. Queen*, 2 Ex. C. R. 273.

4. *Injury to property on Government railway—Negligence of servant of the Crown.*—A filly, belonging to G., was run over and killed by a train upon the Intercolonial railway. It was shown on the trial that at the time of the accident the train was being run faster than usual in order to make up time, that it had just passed a station without being slowed, and was approaching a crossing on the public highway at full speed. The engineer admitted that he saw something on the track, which he did not recognize as a horse. He, however, paid no attention to it, and made no attempt to stop his train until after it was struck. And it was held that the engineer, as a servant of the Crown, was guilty of negligence, for which the Crown was liable under R. S. C. c. 38 s. 23 and 50-51 Vict. c. 16 s. 16 (c). (*The City of Quebec v. The Queen*, 2 Ex. C. R. 252, referred to.) *Gilchrist v. The Queen*, 2 Ex. C. R. 300.

5. *Injury to person—Negligence of servant of the Crown—Retroactive operation of 50-51 Vict. ch. 16.*—The Crown is liable for an injury to the person received on a public work resulting from the negligence of which its officer or servant, while acting within the scope of his duty or employment, is guilty. *City of Quebec v. The Queen*, (2 Ex. C. R. 252) referred to. And a brakesman who forces a child to jump off a railway carriage while it is in motion is guilty of negligence. The fact that the child had no right to be upon such carriage is no defence to an action for an injury resulting from such negligence. *Martin v. The Queen*, 2 Ex. C. R. 328. On

appeal to the Supreme Court of Canada, it was held, reversing the judgment of the Exchequer Court, that even assuming 50-51 Vict., ch. 16, gives an action against the Crown for an injury to the person received on a public work resulting from negligence of which its officer or servant is guilty (upon which point the court expresses no opinion), such Act is not retroactive in its effect and gives no right of action for injuries received prior to the passing of the Act and further that the injury complained of in this case having been received more than a year before the filing of the petition, the right of action is prescribed under Arts. 2262 and 2267 C. C. L. C. *The Queen v. Martin*, 20 Can. S. C. R. 240.

Note.—The plea of prescription was not raised in the court below. On the contrary the Crown intentionally refrained from raising it, although an application had been made in Chambers to amend the pleadings and set up such a defence. But because the suppliant had persistently pressed his claim upon the Government, the Crown eventually decided not to take advantage of it. This was known at the time of the trial and the case proceeded as though prescription had been renounced, but the facts did not get upon the record, and so when the case came before the Supreme Court, there was nothing to show what had happened.

6. *Government fish-way—Public work—Crown's liability.*—B. complained that the Crown, by its servants, so negligently and unskilfully constructed a fish-way in a mill-dam used to secure a head of water for running certain mills owned by him, that such mills and premises were injuriously affected and greatly depreciated in value. And it was held that the fish-way was not a public work within the meaning of 50-51 Vict. c. 16, s. 16 (c), and that the Crown was not liable. *Brown v. The Queen*, 3 Ex. C. R. 79.

7. *Liability of Crown as common carrier.*—Apart from statute the Crown is not liable for the loss or injury to goods or animals, carried by a Government railway, occasioned by the negligence of the persons in charge of the train by which such goods or animals are shipped. *Lavoie v. The Queen*, 3 Ex. C. R. 96. (See *Hall v. McFadden, Cassels' Digest*, 724).

8. *Crown's liability as common carrier.*—By virtue of the several Acts of the Parliament of Canada relating to Government railways and other public works, the Crown is liable for the loss or injury to goods or animals carried by a Government railway occasioned by the negligence of the persons in charge of the train, and, under the Act 50-51 Vict., c. 16, a petition of right will lie for the recovery of damages resulting from such loss or injury. (*The Queen v. McLeod*, 8 Can. S. C. R. 1; and *The Queen v. McFarlane*, 7 Can. S. C. R. 216, distinguished.) *Ibid.*

9. *Regulations for carriage of freight—Notice thereof—Government Railway.*—The publication in the Canada Gazette, in accordance with the provisions of the statute under which they are made, of regulations for the carriage of freight on a Government railway is a notice thereof to all persons having occasion to ship goods or animals by such railway. *Ibid.*

10. *Effect of notice of regulations for carriage of freight where there is negligence of the servant of the Crown.*—Under and by virtue of R. S.C. c. 38, certain regulations were made by the Governor in Council whereby it was provided that all live stock carried over the Intercolonial Railway were to be loaded and discharged by the owner or his agent, and that he assumed all risk of loss or injury in the loading, unloading and transportation of the same. The regulations were, by section 44, to be read as part of the Act, and by section 50 it was enacted that the Crown should not be relieved from liability by any notice, condition or declaration where

damage arose from the negligence, omission or default of any of its officers, employees or servants. And the court held that the regulations did not relieve the Crown from liability where such negligence was shown. *Ibid.*

11. *Duty of conductor of train carrying live stock in box cars.*—The owner of a horse shipped in a box car, the doors of which can only be fastened from the outside, and who is inside the car with the horse, has a right to expect that the conductor of the train will see that the door of the car is closed and properly fastened before the train is started. *Ibid.*

12. *Tort—Remedy therefor.—Semble:*—That the Crown's liability for the negligence of its servants rests upon statutes passed prior to *The Exchequer Court Act*, (50-51 Vict. c. 16), and that the latter substituted a remedy by petition of right or by a reference to the Court for one formerly existing by a submission of the claim to the Official Arbitrators, with an appeal to the Exchequer Court and thence to the Supreme Court of Canada. *Martial v. The Queen*, 3 Ex. C. R. 118.

13. *Accident—Negligence—Burden of proof.*—The immediate cause of an accident on a Government railway was the breaking of an axle that was defective. It was shown, however, that great care had been taken in its selection and that the defect was latent and not capable of detection by any ordinary means of examination open to the railway officials. The train had immediately before the accident passed a curve which, at its greatest degree of curvature, was one of 6° 52. It was alleged that the persons in charge of the train were guilty of negligence in passing this curve and a switch near it at too great a rate of speed. On that point the evidence was contradictory, and, having regard to the rule that the burden is upon the suppliant to establish the negligence of the persons in charge of the train, the court held that a case of negligence had not been made out. *Dubé v. The Queen*, 3 Ex. C. R. 147.

14. *Crown's liability for negligence of its servant.*—The Crown is liable for an injury to property on a public work occasioned by the negligence of its officer or servant acting within the scope of his duty. That liability is recognized in *The Exchequer Court Act*, s. 16 (c), but had its origin in the earlier statute, 33 Vict. c. 23. *City of Quebec v. The Queen*, 3 Ex. C. R. 164. *On Appeal to the Supreme Court of Canada this judgment was affirmed.*

15. *Duty of officer of the Crown in charge of a public work.*—It is not the duty of an officer of the Crown to repair or add to a public work at his own expense, nor unless the Crown has placed at his disposal money or credit with instructions to execute the same. He must exercise reasonable care to know of the condition in which the public work under his charge is, and he must report any defect or danger that he discovers. It does not follow from the fact that a public officer does not discover a defect in, or a danger that threatens, a public work under his charge, that he is negligent. To make the Crown liable in such a case it must be shown that he knew of the defect or danger and failed to report it, or that he was negligent in being and remaining in ignorance thereof. (*The Sanitary Commissioners of Gibraltar v. Orfila*, 15 App. Cas. 400 referred to.) *Ibid.*

16. *Injury to property—Negligence of Crown's officer.*—The injury complained of by the suppliants was caused by the falling of a part of the rock or cliff below the King's Bastion at the citadel in Quebec, in the year 1889. The falling of the rock was caused or hastened by the discharge, into a crevice of the rock, of water from a defective drain, constructed and allowed to become choked up while the citadel and works of defence

were under the control of the Imperial authorities, and before they became the property of the Government of Canada. The existence of this drain and of the defect was not known to any officer of the latter Government, and was not discovered until after the accident, when a careful inquiry was made. In the year 1880 an examination of the premises had been made by careful and capable men, without their discovering its existence or suspecting that there was any discharge of water from it. The surface indications, moreover, were not such as to suggest the existence of a defective drain. The water that came out lost itself in the earth within a distance of four or five feet, and might reasonably have been supposed to be a natural discharge from the cleavages or cracks in the cliff itself. The court held that there was no negligence on the part of any officer of the Crown in being and remaining ignorant of the existence of this drain and of the defect in it. *Ibid.*

17. *Liability of Crown—Property injuriously affected by construction of public work.*—The injurious affection of property by the construction of a public work will not sustain a claim against the Crown based upon clause (c) of the 16th section of *The Exchequer Court Act*, (50-51 Vict. c.16) which gives the court jurisdiction in regard to claims arising out of any death or injury to the person or to property on any public work, resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment. *Archibald v. The Queen*, 3 Ex. C. R. 251, and 23 Can. S. C. R. 147.

18. *Public work—Definition of.* The expression "public work" occurring in the 16th section of *The Exchequer Court Act* includes not only railways and canals and such other public undertakings in Canada as in older countries are usually left to private enterprise, but also all public works mentioned in *The Public Works Act*, R. S. C. c. 36, and other Acts in which such expression is defined. *Leprohon v. The Queen*, 4 Ex. C.R. 100.

19. *Liability of Crown—Post Office—Danger, warning.*—A person who goes to a post office to get his letters goes of his own choice and on his own business; and the duty of the Crown as owner of the building, if such a duty were assumed to exist, would be to warn or otherwise secure him from any danger in the nature of a trap known to the owner and not open to ordinary observation. *Ibid.*

20. *Liability of Crown with regard to approach to a Post Office.*—The Crown is under no legal duty or obligation to any one who goes to a post office building to post or get his letters, to repair or keep in a reasonably safe condition the walks and steps leading to such building. *Ibid.*

21. *Responsibility of Crown's servant acting without authority of law.*—For acting without authority of law, or in excess of the authority conferred upon him, or in breach of the duty imposed upon him, by law, an officer of the Crown is personally responsible to any one who sustains damage thereby. *Boyd v. The Queen*, 4 Ex. C. R. 116.

22. *Negligence of Crown's servant, liability.*—Under section 16, clause (c), of *The Exchequer Court Act* (50-51 Vict. c. 16) the Crown is liable for the death of any person on a public work resulting from the negligence of any of its officers or servants while acting within the scope of their duty or employment. *Filion v The Queen*, 4 Ex. C. R. 134. This judgment was affirmed on appeal to the Supreme Court of Canada.

23. *Liability of Crown for injuries resulting from negligence of its servants.*—Within the limitation prescribed in sec. 16 of *The Exchequer Court Act* (50-51 Vict. c. 16) the Crown is liable for injuries resulting from the negligence of its officers and servants in any case in which a subject would, under like circumstances, be liable. *Ibid.*

24. *Negligence of Crown's foreman—Want of warning to fellow servant.*—While certain repairs were being made to the Lachine Canal, the superintendent of the canal had occasion to use a derrick for the purpose of such repairs. The suppliant's son was, together with other labourers, working at the bottom of the canal under the derrick, but not in connection with it, while it was being erected by another gang of workmen under the immediate direction of the superintendent and his foreman. The work of setting it up was begun in the afternoon of the day of the accident and finished by electric light in the evening. The suppliant's son and the other men working with him were allowed to continue their labours at the bottom of the canal after the derrick was set up, and no notice was given to them by the superintendent or his foreman when they were about to put the derrick into operation. While the first load was being lifted (in weight much under the supposed capacity of the derrick) a portion of the derrick broke at a place where it had been cracked before and fell upon the men working at the bottom of the canal, injuring the suppliant's son so severely that he died a few days afterwards. It was *held* that the superintendent and foreman, in failing to give notice to the men working beneath the derrick when they started to operate it, were guilty of negligence for which the Crown is liable. *Ibid.*

25. *Ratification by the Crown of a tortious act of its officer.*—The ratification by the Crown of a tortious act committed by one of its officers whereby a foreigner has suffered injury is equivalent to a prior command and renders it an act of state for which the Crown is alone responsible and such defence is open under the general issue. *Buron v. Denman*, 2 Ex. 167. This case has, however, been limited and explained as applying only to cases where the tortious act has affected foreigners and does not apply to similar injury suffered by British subjects. See *Doss v. Secretary of State for India*, L. R. 19 Eq. 532; *Mayor of London v. Cox*, L. R. 2 H. L. 262; *Phillips v. Eyre*, L. R. 6 Q. B. 24; *Mill v. Hawker*, L. R. 9 Ex. 326 and *Dixon v. Farrer*, 17 Q. B. D. 663; 18 Q. B. D. 49.

Jurisdiction in Cases of Claims to Public Lands—Interpretation.

[5. The Exchequer Court shall have exclusive original jurisdiction, at the suit or upon the application of any person claiming to be entitled to public lands for which no patent has issued, as being the heir, devisee, representative, or assignee of the original claimant, or as having derived a title or claim from or through any such heir, devisee, representative, or assignee,—or at the suit or upon the application of the Attorney-General of Canada, in any case in which public lands are claimed by any such person,—to ascertain, determine and declare who is the person to whom the patent for such lands ought to issue;

2. The court shall decide all such cases as in its judgment the justice and equity of the case demand, and shall report its decision to the Governor in Council, and letters patent may issue granting the lands in question in accordance with such decision;

3. The letters patent so issued shall have the same and no other effect and operation, in regard to any charge, incumbrance, lien, matter or thing upon or affecting the lands so granted, as letters patent therefor in favour of the original claimant would have had, save only as establishing the claim of the party in

whose favour they are issued to the lands to which they relate as the heir, devisee, representative, or assignee of, or as otherwise representing the original claimant;

4. Neither the decision of the court, nor the issuing of the letters patent on such decision shall extend to or in any way affect any claim of the party in whose favour such decision is given or such letters patent are issued, or of any other party, to any lands other than those to which such decision expressly relates, and which are mentioned and described in the report and letters patent; but such claim to other lands shall continue and remain as if such decision and report had not been made and such letters patent had not been issued;

5. The expression "original claimant" in this section means the person from whom title must be traced in order to establish a right or claim to letters patent for the lands in question.]

These provisions were introduced by 54-55 Vict. ch. 26.

See notes under previous section, and under section 17.

1. *Sale of Dominion lands—Mines and minerals.*—Where the Crown, having authority to sell, agrees to sell and convey public lands, and the contract is not controlled by some law affecting such lands and there is no stipulation to the contrary express or implied, the purchaser is entitled to a grant conveying such mines and minerals as pass without express words. *Canadian Coal and Colonization Co. v. The Queen*, 3 Ex. C. R. 157. (This case has been taken to appeal and is at present standing for judgment in the Supreme Court of Canada.)

2. *Crown lands—Letters patent for—Setting aside.*—Letters patent having been issued to F. of certain lands claimed by him under *The Manitoba Act* (33 Vict. ch. 3, as amended by 38 Vict. ch. 52) and an information having been filed under R. S. C. c. 54, s. 57 at the instance of a relator claiming part of said lands to set aside said letters patent as issued in error or improvidence, the court *held* that a judgment avoiding letters patent upon such an information could only be justified and supported upon the same grounds being established in evidence as would be necessary if the proceedings were by *scire facias*. *Fonseca v. Attorney-General of Canada*, 17 Can. S. C. R. 612.

3. *Letters patent—Error and improvidence—Superior title.*—The term "improvidence" as distinguished from error, applies to cases where the grant has been to the prejudice of the commonwealth or the general injury of the public, or where the rights of any individual in the thing granted are injuriously affected by the letters patent; and F.'s title having been recognized by the Government as good and valid under *The Manitoba Act*, and the lands granted to him in recognition of that right, the letters patent could not be set aside as having been issued improvidently except upon the ground that some other person had a superior title also valid under the Act. *Ibid.*

4. *Letters patent—Trespasser—Error and improvidence—Evidence—Estoppel.*—Letters patent cannot be judicially pronounced to have been issued in error or improvidently when lands have been granted upon which a trespasser, having no color of right in law, has entered and was in possession without the knowledge of the Government officials upon whom rests the duty of executing and issuing the letters patent, and of investigating and passing judgment upon the claims therefor; or when such trespasser, or any person claiming under him, has not made any applica-

tion for letters patent; or when such an application has been made and refused without any express determination of the officials refusing the application, or any record having been made of the application having been made and rejected. *Ibid.*

5. *Crown domain—Disputed territory—License to cut timber.*—The claimant applied to the Government of Canada for licenses to cut timber on ten timber berths situated in the territory lately in dispute between that Government and the Government of Ontario. The application was granted on the condition that the applicant would pay certain ground-rents and bonuses and make surveys and build a mill. The claimant knew of the dispute which was at the time open and public. He paid the rents and bonuses, made the surveys and enlarged the mill he had previously built, which was accepted as equivalent to building a new one. The dispute was determined adversely to the Government of Canada at the time six leases or licenses were current, and consequently the Government could not renew them. The leases were granted under sections 49 and 50 of 46 Vict. ch. 17, and the regulations made under the Act of 1879 provided that "the license may be renewed for another year subject to such revision of the annual rental and royalty to be paid therefor, as may be fixed by the Governor-in-Council." Upon a claim for damages by the licensee, the court *held*, dismissing the appeal from the judgment of the Exchequer Court, (3 Ex. C. R., 184) that the orders in council issued pursuant to 46 Vict. ch. 17, secs. 49 and 50 authorizing the Minister of the Interior to grant licenses to cut timber did not constitute contracts between the Crown and intending licensees, such orders in council being revocable by the Crown until acted upon by the granting of licenses under them. And that the right of renewal of the licenses was optional with the Crown and the claimant was entitled to recover from the Government only the moneys paid to them for ground-rents and bonuses.—*Bulmer v. The Queen*, 23 Can. S.C.R., 488.

6. *Crown domain—Implied warranty of title.*—The licenses which were granted and were actually current in 1884 and 1885 conferred upon the licensee "full right, power and license to take and keep exclusive possession of the said lands, except as thereinafter mentioned for and during the period of one year from the 31st of December, 1883, to the 31st December, 1884, and no longer." *Quære*:—Though this was in law a lease for one year of the lands comprised in the license, was the Crown bound by any implied covenant to be read into the license for good right and title to make the lease and for quiet enjoyment?—*Ibid.*

7. *License to cut timber—Interest in land.*—An agreement to issue and to renew from year to year at the will of the lessee or licensee a lease or license to take exclusive possession of a tract of land and to cut the merchantable timber thereon is an agreement in respect to an interest in land, and not merely a sale of goods. *Bulmer v. The Queen*, 3 Ex. C. R. 184.—23 Can. S.C.R., 488.

8. *Federal and Provincial rights—Title to lands in railway belt B. C.*—Lands that were held under pre-emption right, or Crown grant, at the time the statutory conveyance of the railway belt by the Province of British Columbia to the Dominion of Canada took effect, are exempt from the operation of such statutory conveyance, and upon such pre-emption right being abandoned or cancelled all lands held thereunder become the property of the Crown in the right of the province and not in the right of the Dominion. *The Queen v Demers*, 3 Ex. C. R. 293.

(On appeal to the Supreme Court of Canada this judgment was affirmed, 22 Can. S. C. C. 482.)

9. *Unsurveyed lands held under pre-emption record at the time grant of railway lands came into operation.*—Unsurveyed lands recorded under the British Columbia Land Acts of 1875 and 1879 are lands held under "pre-emption right" within the meaning of the 11th section of the Terms of Union between the Province of British Columbia and the Dominion of Canada. (See Statutes of Canada, 1872, p. XCVII.) *Ibid.*

Concurrent Jurisdiction of the Court.

17. The Exchequer Court shall have and possess concurrent original jurisdiction in Canada:—

(*a.*) In all cases relating to the revenue in which it is sought to enforce any law of Canada, including actions, suits and proceedings by way of information to enforce penalties, and proceedings by way of information *in rem*, and as well in *qui tam* suits for penalties or forfeitures as where the suit is on behalf of the Crown alone; (R. S. C. ch. 135, sec. 75 (a).)

Qui tam actions are instituted by filing a Statement of Claim as provided by Rule 7 of this court. (See notes thereunder.)

(*b.*) In all cases in which it is sought at the instance of the Attorney-General of Canada, to impeach or annul any patent of invention, or any patent, lease, or other instrument respecting lands; (Ibid. sec. 76.)

(*c.*) In all cases in which demand is made or relief sought against any officer of the Crown for anything done or omitted to be done in the performance of his duty as such officer; (Ibid. sec. 75 (b).)

(*d.*) In all other actions and suits of a civil nature at common law or equity in which the Crown is plaintiff or petitioner. (Ibid. sec. 76.)

1. *Comity of court—Crown can choose its forum.*—While recognizing it as a settled principle of law that the King can choose any of his courts for the purpose of obtaining relief, the Exchequer Court, out of comity, declined to enjoin an officer of a provincial court, with which it had concurrent original jurisdiction to give the relief asked, from executing process of such court. (See illustration of this rule in *Carthorne v. Campbell*, per Eyre, C. B., 1 Anstr. 205, in note.) 2. The fact that the concurrent jurisdiction of the Exchequer Court with the court of a province, under sec. 17 of 50-51 Vict. ch. 16, was attacked in a former case standing for judgment on appeal to the Supreme Court of Canada (*a*), was regarded by the judge of the Exchequer Court as another reason why he should stay his hands in respect of the injunction asked. *The Queen v. Hurteau*, Oct. 27th, 1892.

2. *Jurisdiction of Exchequer Court.—In Farwell v. The Queen*, 22 Can. S. C. R. p. 554, it was held that the Parliament of Canada had the right to enact that all actions and suits of a civil nature at common law or equity, in which the Crown in right of the Dominion is plaintiff or petitioner, may be brought in the Exchequer Court.

3. *The King can choose his court.*—King, J., who delivered the judgment of the court in *Farwell v. The Queen* (supra) said, citing *Chitty on*

(*a*). Since the above, the jurisdiction of the Court has been affirmed in *Farwell v. The Queen*, 22 Can. S. C. R. 554.

Prerogatives, (page 244), that "the King has the undoubted privilege "of suing in any court he pleases. And where the matter in suit in "another court concerns the revenue, or touches the profit of the King, he "has the right to remove the suit into the Exchequer. (See the illustra- "tions given of this in *Cawthorne v. Campbell*, 1 Anstr. 205, 218, in note). "This privilege is said to be without the least mixture of prerogative "process; or whether it is a proper subject for prerogative process only to "act upon or not, that is not an ingredient."

The cases of *The Attorney-General and Humber Conservancy Commissioners v. Constable*, L. R. 4 Ex. D. 172, and *The Attorney-General v. Walker*, 25 Grant, 233, are authorities in support of the above contention.

4. *Venue.*—In an information of intrusion the venue may be laid in any district. *Attorney-General v. Dockstader*, 5 U. C. K. B. (O.S.) 341.

5. *Jurisdiction—Injunction.*—An information at the suit of the Attorney-General to obtain an injunction to restrain a defendant from doing acts that interfere with and tend to destroy the navigation of a public harbour, is a civil and not a criminal proceeding, and the Exchequer Court has concurrent original jurisdiction over the same under 50-51 Vict. ch. 16, sec. 17 (d). *The Queen v. Fisher*, 2 Ex. C. R. 365.

6. *Jurisdiction of Exchequer Court—Conditional gift, breach of condition—Discovery against the Crown—Power to restrain Crown.*—The Crown held certain lands at Ottawa for the purposes of the Rideau Canal. To its title to a portion of the lands, which was freely granted by S. to the Crown for the purposes of the said canal, was attached a condition that no buildings should be erected thereon. It was *held* that such condition or proviso did not create a condition subsequent, a breach of which would work a forfeiture and let in the heirs of S., nor would the use by the Crown of a portion of the lands in question for purposes other than the "purposes of the canal" work such a forfeiture.—Further that the Court has no power to restrain the Crown from making any unauthorized use of the land or to compel the Crown to remove any buildings erected thereon contrary to the terms of the grant, and the heirs are not entitled to discovery or to an inquiry as to the particular uses to which the Crown has put the lands in question or as to what buildings have been erected thereon. But *semble* that such a declaration and inquiry might be made in a case in which the court had jurisdiction to grant relief. *Magee v. The Queen*, 3 Ex. C. R. 304 and 4 Ex. C. R. 63.

7. *Rights of the Crown under Civil Code Lower Canada.*—The Crown is bound by the two codes of Lower Canada, and can claim no priority except what is allowed by them. Being an ordinary creditor of a bank in liquidation, it is not entitled to priority of payment over its other ordinary creditors. *Exchange Bank of Canada v. The Queen*, 11 App. Cas. 157. (But see now *The Bank Act*, 53 Vict. ch. 31, sec. 53.)

8. *Priority of payment in respect of Crown's "comptables" in P. Q. before the Codes.*—Prior to the Codes, the law relating to property in the Province of Quebec was, except in special cases, the French law, which only gave the King priority in respect of debts due from "comptables," that is, officers who received and were accountable for the King's revenues. *Ibid.* (See 53 Vict. ch. 31, sec. 53.)

9. *Crown's preference over chirographic creditors.*—Article 1994 of the Civil Code L. C. must be construed according to the technical sense of "comptables." And Article 611 of the Code of Civil Procedure L.C., giving to the Crown priority for all its claims, must be modified so as to be in harmony therewith. Accordingly, by its true construction, the intention of the legislature was that "in the absence of any special privilege, the Crown

has a preference over unprivileged chirographic creditors for sums due to it by a defendant being a person accountable for its money." *Ibid.* (See 53 Vict. ch. 31, sec. 53.)

10. *Land patent, cancellation of—Improvidence in granting same.*—T., a half-breed, was on the 15th July, 1870, in actual peaceable possession of a lot of land in the Province of Manitoba, previously purchased by him, and of which he had been for some years in undisturbed occupancy. On the 3rd of August, 1871, he shared in the gratuity given to certain Chippewa and Swampy Cree Indians under a treaty then concluded with them, and in the years 1871, 1872, 1873 and 1874 he participated in the annuities payable thereunder. But before taking any moneys under the treaty he enquired of the commissioner who acted for Her Majesty in its negotiation, whether by accepting such money he would prejudice his rights to his private property, and was informed that he would not; and when in 1874 he learned for the first time that by reason of his sharing in such annuities he was liable to be accounted an Indian and to lose his rights as a half-breed, he returned the money paid to him in that year. Subsequently his status as a half-breed was recognized by the issue to him in 1876 of half-breed scrip. *Held* that under *The Manitoba Act*, and amendments, (33 Vict. c. 3 s. 32, subsec. 4, and 38 Vict. c. 52 s. 1) he was entitled to letters patent for the lot mentioned. *The Queen v. Thomas*, 2 Ex. C. R. 246.

11. *Relations between Crown and Provinces—B. N. A. A. 1867.—The British North America Act*, 1867, has not severed the connection between the Crown and the provinces; the relation between them is the same as that which subsists between the Crown and the Dominion in respect of the powers executive and legislative, public property and revenues, as are vested in them respectively. In particular, all property and revenues reserved to the provinces by secs. 109 and 126 are vested in Her Majesty as sovereign head of the province. *Maritime Bank v. The Receiver-General for New Brunswick*, [1892] A. C. 437.

12. *Priority of Provincial Government over simple contract creditors—Prerogative of the Crown.*—The provincial Government of New Brunswick, being a simple contract creditor of the Maritime Bank of the Dominion of Canada in respect of public moneys of the province deposited in the name of the Receiver-General of the province, is entitled to payment in full over the other depositors and simple contract creditors of the bank, its claim being for a Crown debt to which the prerogative attaches. *Ibid.* (See 53 Vict. ch. 31, sec. 53.)

13. *Prerogative of the Crown in Colonies.*—The prerogative of the Crown exists in British Colonies to the same extent as in the United Kingdom. *The Queen v. The Bank of Nova Scotia*, 11 Can. S. C. R. 1, followed. *Maritime Bank v. The Queen*, 17 Can. S. C. R. 657. But see opinion of Sir Barnes Peacock, in *Farwell v. Bowman* (12 App. Cas. 649) as to the effect of the Crown's prerogative of immunity from actions in tort where Colonial Government embark in undertakings which in other countries are left to private enterprise, such as, for instance, the construction of railways, canals, etc.

14. *Prerogatives exercised by Dominion at large.*—The Queen is the head of the Constitutional Government of Canada, and in matters affecting the Dominion at large Her prerogatives are exercised by the Dominion Government. *Ibid.*

15. *Priority of payment—How prerogatives taken away.*—The Crown's prerogatives can only be taken away by express statutory enactment. Therefore Her Majesty's right to payment in full of a claim

against the assets of an insolvent bank in priority to all other creditors is not interfered with by the provision of *The Bank Act*, (R. S. C. c. 120, s. 79) giving note-holders a first lien on such assets, the Crown not being named in such enactment. *Ibid.* (See now 53 Vict. ch. 31, sec. 53.)

16. *Crown's prerogatives—Priority of payment as simple contract creditors.*—The Crown claiming as a simple contract creditor has a right to priority over other creditors of equal degree. This prerogative privilege belongs to the Crown as representing the Dominion of Canada, when claiming as a creditor of a provincial corporation in a provincial court, and is not taken away in proceedings in insolvency by 45 Vict., ch. 23. *The Queen v. The Bank of Nova Scotia*, 11 Can. S. C. R. 1. (But see now 53 Vict. ch. 31, sec. 53.)

17. *Deposit by Insurance Company—Insolvent bank—Priority of payment.*—An insurance company, in order to deposit $50,000 with the Minister of Finance and receive a license to do business in Canada according to the provisions of *The Insurance Act* (R. S. C. c. 124), deposited the money in a bank and forwarded the deposit receipt to the Minister. The money in a bank and forwarded the deposit receipt to the Minister. The money in the bank drew interest which, by arrangement, was received by the company. The bank having failed, the Government claimed payment in full of this money as money deposited by the Crown. And the Court decided that it was not the money of the Crown, but it was held by the Finance Minister in trust for the company, and it was not, therefore, subject to the prerogative of payment in full in priority to other creditors. *Maritime Bank v. The Queen*, 17 Can. S. C. R. 657. (See now 53 Vict. ch. 31, sec. 53.)

18. *Prerogative—Exercise of by local Government—Provincial rights.*—The Government of each province of Canada represents the Queen in the exercise of Her prerogative as to all matters affecting the rights of the province. *The Queen v. The Bank of Nova Scotia*, 11 Can. S. C. R. 1, followed.

Under s. 79 of *The Bank Act* (R. S. C. c. 120) the note-holders have the first lien on the assets of an insolvent bank in priority to the Crown. But see the new Bank Act (53 V. c. 31, s. 53) passed since this decision. *Maritime Bank of the Dominion v. The Receiver-General of N.B.*, 20 Can. S. C. R. 695.

19. *Lands—Information of intrusion—Res judicata.*—In proceedings on an information of intrusion exhibited by the Attorney-General of Canada against F. it had been adjudged that F. who claimed title under a grant from the Crown under the Great Seal of British Columbia, should deliver up possession of certain lands situate within the railway belt in that province. *The Queen v. Farwell*, 14 Can. S. C. R. 392. F. having registered his grant and taken steps to procure an indefeasible title from the registrar of titles of British Columbia, thus preventing grantees of the Crown from obtaining a registered title, another information was exhibited by the Attorney-General to direct F. to execute to the Crown in right of Canada a surrender or conveyance of the said lands. The court *held*, dismissing the appeal from the judgment of the Exchequer Court, that the judgment in intrusion was conclusive against F. as to title. *The Queen v. Farwell*, 14 Can. S. C. R. 392, and *Attorney-General of British Columbia v. Attorney-General of Canada*, 14 App. Cas. 295, commented on and distinguished. And further that the proceedings on the information of intrusion did not preclude the Crown from the further remedy claimed. *The Queen v. Farwell*, 22 Can. S. C. R. 553; 3 Ex. C. R. 271.

20. *Crown's right—Beneficial interest in land.*—The Crown in right of the Dominion has a right to take proceedings to restrain an

individual from making use of a provincial grant in a way to embarrass the Dominion in the exercise of its territorial rights. And further the rights of the Crown, territorial or prerogative, are to be passed under the Great Seal of the Dominion or Province (as the case may be) in which is vested the beneficial interest therein. *Ibid.*

Jurisdiction as to Patents, Copyrights, Trade-marks, (54-55 Vict. Ch. 26.)

[4. The Exchequer Court shall have jurisdiction, as well between subject and subject as otherwise,—

(*a.*) In all cases of conflicting applications for any patent of invention, or for the registration of any copyright, trade-mark or industrial design;

(*b.*) In all cases in which it is sought to impeach or annul any patent of invention, or to have any entry in any register of copyrights, trade-marks or industrial designs made, expunged, varied or rectified;

(*c.*) In all other cases in which a remedy is sought respecting the infringement of any patent of invention, copyright, trade-mark or industrial design.]

The above section is an enactment of *The Exchequer Court Amendment Act*, 1891, (54-55 Vict. ch. 26, assented to September 30th, 1891) and constitutes part of "*The Exchequer Court Act.*"

Interpleader, when it arises.

[6. The Exchequer Court shall have jurisdiction, upon application to the Attorney-General of Canada, to entertain suits for relief by way of interpleader in all cases where the Crown or any officer or servant of the Crown as such is under liability for any debt, money, goods or chattels for or in respect of which the Attorney-General expects that the Crown or its officer or servant will be sued or proceeded against by two or more persons making adverse claims thereto, and where Her Majesty's High Court of Justice in England could, at the time this Act comes into force, grant such relief to any person applying therefor in the like circumstances.]

This section comes also from 54-55 Vict. ch. 26.

LIMITATIONS.

Prescription and Limitation of Actions.

18. The laws relating to prescription and the limitation of actions in force in any province between subject and subject shall, subject to the provisions of any Act of the Parliament of Canada, apply to any proceeding against the Crown in respect of any cause of action arising in such province. (New.)

1. *Expropriation of land in Ontario, 20 years prescription.*—In *Essery v. The Grand Trunk Railway Co.*, 21 O. R. 224, it was held that

the right to compensation is not barred until the expiration of twenty years from the time the land is entered upon and taken for the railway purposes. See also *Ross v. Grand Trunk Railway Co.*, 10 O. R. 447.

2. *No prescription against the Crown.*—The Statute of Limitations does not apply to the Crown. *Rustomjee v. The Queen*, 1 Q. B. D. 487, affirmed Id., 2, 69. Under the law of the Province of Quebec, prescription does not run against the Crown. *See Civil Code L. C., Arts.* 2211 to 2216.

3. *No prescription against the Crown.*—Section 2 of *The Prescription Act*, 1832, (2-3 Will. IV, ch. 71, U. K.) does not apply to the easement of light. Sec 3, which applies to light does not bind the Crown, and no lost grant of light could be presumed as against the Crown or its lessees. *Wheaton v. Maple & Co.*, [1893] 3 Ch. 48.

4. *Short prescription C. C. L. C.—Bodily injury.*—Under the laws of the Province of Quebec the right of action against the Crown for an injury to the person is prescribed by one year under Articles 2262, 2267 and 2188. *The Queen v. Martin*, 20 Can. S. C. R. 240.

5. *Prescription, interruption of.*—The suppliant, who was employed as a mason upon the Chambly Canal, a public work, was injured through the negligence of a fellow-servant. Subsequent to the accident the Crown retained the suppliant in its employ as a watchman on the canal, and indemnified him for expenses incurred for medical attendance. And the court held that what was done was referable to the grace and bounty of the Crown and did not constitute such an acknowledgment of a right of action as would, under Art. 2227 C. C. L. C., interrupt prescription. *Quære*: Does Article 2227 C. C. L. C. apply to claims for wrongs as well as to actions for debt? *Martial v. The Queen*, 3 Ex. C. R. 118.

6. *Prescription—Widow's right to action—Arts.* 1056 *and* 2262.—The Civil Code of Lower Canada does not make it a condition precedent to the right of action given by Article 1056 to the widow of a person dying as therein mentioned that the deceased's right of action should not have been extinguished in his lifetime by prescription under Art. 2262. The death is the foundation of the right given by the former article which is governed by the rule of prescription contained therein and is exempt from the rule of prescription which barred the claim of the deceased. *Robinson v. The Canadian Pacific Railway Co.* [1892] A. C. 481.

If Action is Pending, Claim not to be Entertained.

19. No claim shall be entertained by the court for or in respect to which the claimant has pending in any other court any suit or process against any person, who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereof, acting under the authority of the Crown. (R. S. U. S. sec. 1067.)

SITTINGS OF THE COURT.

Sittings of the Court.

20. Subject to rules of court, the judge of the Exchequer Court may sit and act at any time and at any place in Canada for the transaction of the business of the Exchequer Court, or any part thereof. (R. S. C. ch. 135, sec. 78.)

Under the provisions of Rule 143, the court may be convened, and sittings fixed, for any time and place in the Dominion of Canada, as to the judge seems fit, for the transaction of the business of the court, upon giving notice of such sittings in the *Canada Gazette*.

It has been customary, so far, to fix a sitting of the court in each province, at least once a year, in order to offer the subject an opportunity of having his case tried and heard in his own province.

PROCEDURE.

Practice and Procedure, how regulated.

21. The practice and procedure in suits, actions and matters in the Exchequer Court shall, so far as they are applicable and unless it is otherwise provided for by this Act, or by general rules made in pursuance of this Act, be regulated by the practice and procedure in similar suits, actions and matters in Her Majesty's High Court of Justice in England, at the time of the coming into force of this Act. (R. S. C. ch. 135, sec. 79.)

Semble:—That under the Rules of Court now in force, and under the 7th section of *The Petitions of Right Act*, 1860, (23-24 Vict. (U. K.) ch. 34) the Attorney-General might, in a proper case, make use of the procedure of the High Court of Justice to bring in as third-party any person against whom the Crown claimed to be entitled to contribution or indemnity, and if so it is possible that the same course is open to the Attorney-General here under section 21 of *The Exchequer Court Act*. *Hall v. The Queen*, and *Goodwin*, third party. March 2nd, 1893. E. O. XVI R. 48, *Wilson's Judicature Acts*, 158 *et seq*.

Certain Rules and Orders Continued.

22. All provisions of law, and all rules and orders now regulating the practice and procedure, including evidence, in the Exchequer Court, shall, so far as they are consistent with the provisions of this Act, continue in force until altered under this Act. (New.)

How Claim to be Proceeded with.

23. Any claim against the Crown may be prosecuted by petition of right, or may be referred to the court by the head of the Department in connection with the administration of which the claim arises, and if any such claim is so referred no *fiat* shall be given on any petition of right in respect thereof. (R. S. C. ch. 136, sec. 3 enlarged.)

This section is practically an enlargement of sections 3 and 4 of *The Petition of Right Act*. It affords the subject a simple and expeditious way of prosecuting claims against the Crown before the court without having to go through the somewhat complicated process of obtaining a *fiat* on a petition of right.

The first Rule of the General Order made in this court on the 7th day of March, 1888, provides for the practice and procedure to be followed on such references. See Rule 17 and notes thereunder.

Departmental regulations.—All references to the court, under sec. 23 of 50-51 Vict. ch. 16, by the head of any department must be made through the Minister of Justice, in pursuance of the following order in council of the 15th day of October, 1887, viz :—

On the recommendation of the Minister of Justice, and under the provisions of *The Revised Statutes of Canada*,

His Excellency in Council has been pleased to order as follows :—

With reference to section 23 of 50-51 Victoria, chapter 16, intituled : "An Act to amend the Supreme and Exchequer Courts Act, and to make "better provision for the trial of claims against the Crown," which provides that "any claim against the Crown may be prosecuted by petition "of right, or may be referred to the court by the head of the Department "in connection with the administration of which the claim arises, and "any such claim is so referred no fiat shall be given on any petition "right in respect thereof," and in order to insure regularity in such references, and in order that the Minister of Justice may be kept informed of such references with a view to advising against the granting of any fiat on a petition of right in respect of a claim so referred, all references to the court, under the authority of the section quoted, to be made by any head of a department, shall be so made through the Minister of Justice.

O. C. Oct. 15, 1887.

The following form of Reference to the Court may be used :—

IN THE EXCHEQUER COURT OF CANADA.

IN THE MATTER OF

A. B.,

Claimant ;

v.

HER MAJESTY THE QUEEN,

Respondent.

By virtue of the powers vested in me in this behalf, under sec. 23 of 50-51 Vict. ch. 16, I hereby refer the claim of the said A. B. against the above named respondent, to the Exchequer Court of Canada for adjudication thereon.

Dated at Ottawa, this.....day of.....A.D. 189..

Minister of Railways and Canals.
(*as the case may be.*)

To
The Registrar of
The Exchequer Court of Canada.

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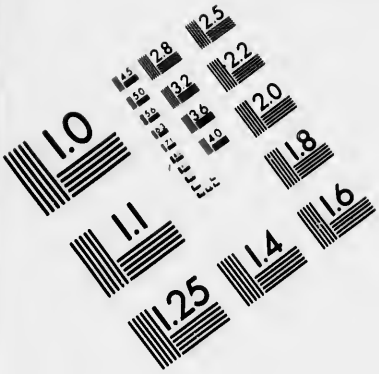
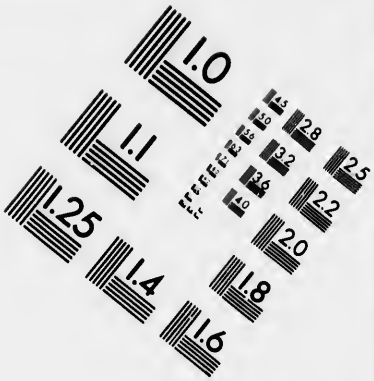
1. *Petition of right or reference.—Quære :* Will an action by petition or on reference lie in the Exchequer Court against the Crown for unliquidated damages for breach of warranty implied in a sale of personal chattels? *The Saint Catharines Milling, etc., Co. v. The Queen*, 2 Ex. C. R. 202.

2. *Duty of King's advisers in respect of Petition of Right.—Semble* it is not competent to the King, or rather to his responsible advisers, to





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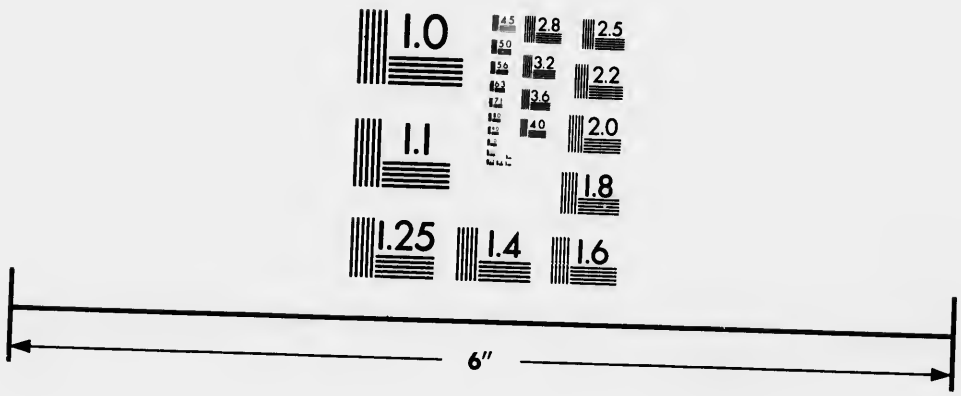

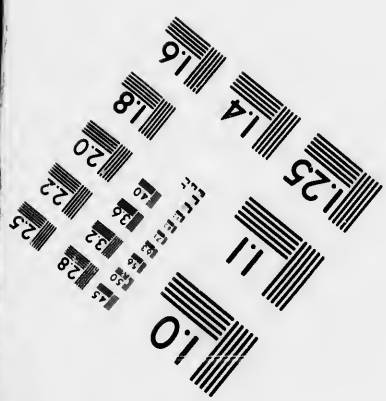

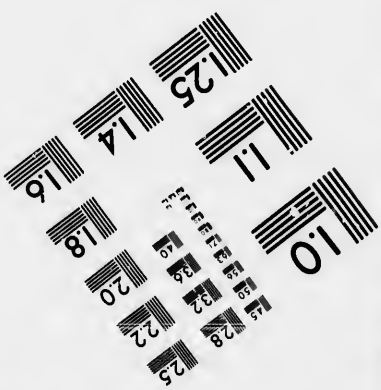

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refuse capriciously to put into a due course of investigation any proper question raised by a petition of right. *Ryves v. The Duke of Wellington*, 9 Beav. 579.

No Jury.

24. Issues of fact and inquisitions in the Exchequer Court shall be tried by the judge without a jury. (In substitution for R. S. C. ch. 135 secs. 80 and 81.)

Where trial may take place and taking of evidence.

25. The trial of any issue of fact or inquisition may, by order of the court, take place partly at one place and partly at another; and the evidence of any witness may, by like order, be taken by commission, or on examination or affidavit. (R. S. C. ch. 136 sec. 10.)

Reference to registrar, etc.,—Assessors.

[**26.** The court may, for the purposes of taking accounts or making enquiries, or for the determination of any question or issue of fact, refer any cause, claim, matter or petition to the registrar or any other officer of the court, or to any official or special referee for inquiry and report, and may also, if it thinks it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause, matter or petition, wholly or partially, with the assistance of such assessor or assessors.] (R. S. C. ch. 135 sec. 82 enlarged.)

As amended by 52 Vict. ch. 38.—The original section has been amended by adding after the words "making enquiries," in the second line, the following: "*or for the determination of any question or issue of fact*;" by striking off in the third line thereof, after the word "petition," the words "*over which it has jurisdiction*" and by adding after the word "referee," in the fifth line, the words "*for enquiry and report*."

See Rules 187 to 193 relating to references, *post*.

Where the whole cause of action is referred to a referee for trial, he will have the power to dispose as well of the costs of the reference as of the action. For authority on the subject see *Patten v. The West of England Co.* [1894] 2 Q. B. 159. This practice would seem inapplicable to Ontario where the scope of a reference is much more limited than in England, 30 C. L. J. 562. With regard to the practice relating to references in the Province of Quebec see Code of Civil Procedure L. C., Arts. 300 *et seq.*

Evidence may be taken down in shorthand.

27. By direction of the court the testimony of any witness may be taken down in shorthand by a stenographer, who shall be previously sworn faithfully to take down and transcribe the testimony; and the court may make such order for the payment of costs thereby incurred as is just. (In substitution for R. S. C. ch. 40 sec. 14 (2), (3).)

SECURITY FOR COSTS.

Effect of Failure to Give Security for Costs.

28. If an order on any petition, reference or proceeding against the Crown on application by or on behalf of the Attorney-General of Canada is made for security for costs, and the suppliant, claimant or petitioner fails to give security to the satisfaction of the judge for the payment of costs in the event of the judgment being against such suppliant, claimant or petitioner, or of its not exceeding the sum tendered by the Crown, all further proceedings on such petition, reference or proceeding shall be stayed until otherwise ordered. (In substitution for R. S. C., ch. 40 sec. 12.)

The Crown cannot be called upon to give security for costs, *Tomline v. The Queen*, L. R., 4 Ex. Div. 252, at page 254; 48 L.J. Ex. 453; but may call upon the subject to do so.—See Clode *on Petition of Right* and authorities therein cited, at page 181.

Where in the matter of a petition of right, the Crown, through the Secretary of the Public Works Department, made an offer to a suppliant of the sum of $3,950 in full settlement of his claim, and afterwards made an application for security for costs, the application was refused on the ground that the power of ordering a party to give security for costs is a matter of discretion and not of absolute right, and that the Crown in this case could suffer no inconvenience from not getting security. Further, an application for security for costs in this court must be made within the time allowed for filing the statement of defence, except under special circumstances. *Wood v. The Queen*, 7 Can. S. C. R. 631.

See Rule 259, *post*.

TENDER.

Tender may be made.

29. The Crown may, in the matter of any petition, reference or proceeding, plead a tender without paying the money tendered into court.

1. Where a tender was adequate though not liberal, no cost was allowed after the time the money was paid into court.—*The Lotus*, 7 P.D. 199.

2. Where the tender was not unreasonable and the claim very extravagant, the claimant was not given costs, although the amount of the award exceeded somewhat the amount tendered. *McLeod v. The Queen*, 2 Ex. C.R. 106.

What shall be deemed a legal tender.

30. Every tender of a sum of money on behalf of the Crown shall be deemed to be legally made if made by a written offer to pay such sum, given under the hand of a Minister of the Crown, or some person acting for him in that behalf, and notified to the person having such claim. (R. S. C. ch. 40 sec. 9.)

RULES FOR ADJUDICATING UPON CLAIMS.

Matters to be considered in adjudicating on claims.

[31. The court shall, in determining the compensation to be made to any person for land taken for or injuriously affected by the construction of any public work, take into account and consideration, by way of set-off, any advantage or benefit, special or general, accrued or likely to accrue, by the construction and operation of such public work, to such person in respect of any lands held by him with the lands so taken or injuriously affected.] (R. S. C. ch. 40 sec. 15.)

As amended by 54-55 *Vict. ch.* 26, *sec.* 7.

The following rules in expropriation matters have been framed from Mr. Cripps' work *On Compensation*. They have been summarized and classified with a view of convenience to the practitioner :—

RULES FOR ADJUDICATING UPON CLAIMS FOR LANDS TAKEN OR INJURIOUSLY AFFECTED.

WHERE LANDS ARE INJURIOUSLY AFFECTED ONLY.

(1)—The damage or loss must result from an act made lawful by the statute.

(2)—The damage or loss must be such as would otherwise have been actionable.

(3)—The damage or loss must be an injury to lands and not a personal injury or any injury to trade.

(4)—The damage or loss must be occasioned by the construction and not by the use of the works authorized. Cripps *On Compensation*, 2nd Ed. 113.

Referring to the view expressed in this last rule, Lush, J., in *The Queen v. Barry*, 2 Ex. C.R. 355, said:—"With reference to the amount of "compensation, it is established by the decisions under the Lands Clauses "Consolidation Acts, though possibly there is still ground for some discus- "sion, that in cases of injurious affection only, the owner is not entitled "to compensation for injury arising from the operation of the authorized "works, but only for loss arising from their construction."

It is difficult to see what proper distinction can be made in respect to the measure of damages between a case in which a part of the claimant's land is taken, which of course would sustain an action but for the statute, and a case in which some rights or interest of his in the same land are so affected that but for the statute he would equally have a right of action. If there is no actionable injury the claimant fails of course, but if he would have had his action, on what principle can different rules as to the measure of damages be adopted in the two cases? Is not the true rule in both cases that stated in *re Wadham v. The North Eastern Railway Company*, 14 Q.B.D. 747, that the measure of damages is the depreciation in the value of the property as a marketable article to be employed for any purpose to which it may legitimately and reasonably be put? And if so, will not elements of damage arising from the natural and ordinary use of the work, as well as those resulting from its construction, have to be taken into account in determining the amount of such depreciation?

WHERE LANDS ARE TAKEN AND OTHERS HELD THEREWITH INJURIOUSLY AFFECTED.

(1)—The first rule applies.

(2)—The second rule becomes immaterial.

(3)—The third rule, if applicable, has a modified application. The measure of compensation is the whole consequential loss which the owner has sustained.

(4)—The fourth rule is not applicable.

The measure of compensation is the depreciation in the value of the premises damaged, assessed not only in reference to the loss occasioned by the construction of the authorized works, but also in reference to the loss which may probably result from the nature of their user. Cripps, *On Compensation*, 2nd Ed. 121-4.

JURISPRUDENCE, ETC.:

1. *Expropriation—Advantages derived from a public work—Special—General.*—The above section (sec. 31 of 50-51 Vict. ch. 16) has been amended by 54-55 Vict. ch. 26, sec 7. The object of this amendment appears to have been to enact the tenor of the decision in re *The Queen v. Currier*, 2 Ex. C. R. 36, which would seem to have borne weight with the legislature, for it was there held that: "Notwithstanding the generality of the terms "of 44 Vict. c. 25, s. 16 (re-enacted by R. S. C., c. 40, s. 15, and 50-51 Vict. "c. 16, s. 31), which provides that the Official Arbitrators shall take into "consideration the advantages accrued, or likely to accrue, to the claim-"ant, or his estate, as well as the injury or damage occasioned by reason "of the public work, such advantages must be limited to those which are "special and direct to such estate, and not construed to include the "general benefit shared in common with all the neighbouring estates."

2. *Expropriation—Advantages.*—Advantages include the special and direct as well as the general benefit. The direct and peculiar benefit may be set off against damages; but the general one cannot. *Sutherland on Damages*, Vol. 3, 1st Edn., pp. 452-3-4.

3. *Advantage accruing to paper town from railway.*—The advantage resulting to the owner of a paper town from the Crown making it the terminus of a Government railway, and constructing within its limits a station-house and other buildings, is one that should be taken into account by way of set-off under 50-51 Vict. c. 16, sec. 31. *Paint v. The Queen*, 2 Ex. C. R. 149; and 18 Can. S. C. R. 718.

4. *Special and general damages.*—Upon the question as to whether the damage should be special and not general, see the *American Law Review*, Vol. 25, p. 935.

5. *Enhancement of future value of property.*—Where there was evidence that the railway would enhance the value for manufacturing purposes of certain portions of land remaining to claimant upon an expropriation; but it did not appear that there then was, or in the near future would be, any demand for the land for such purposes, the court did not consider this a sufficient ground upon which to reduce the amount of compensation to which the claimant was otherwise entitled. *McLeod v. The Queen*, 2 Ex. C. R. 106.

6. *Expropriation—Allowance for compulsory taking.*—With respect to lands taken, a percentage amounting to 50¢ per cent. upon the original value, ought to be given in compensation for the compulsion only, to which the seller is bound to submit, the severance and the damage being of a distinct consideration. *Sel. Com. H. L.* 1845; *Hodges on Railways* Vol. 1., 7th Edn. 208. See note No. 9.

7. *Allowance for compulsory taking.*—Mr. Cripps, at p. 98, 2nd Edn. of his work on the *Law of Compensation*, says it is customary to allow 10£ per cent. to the value of the land taken under compulsory powers.

8. *Allowance for compulsory taking—Tenant for life.*—In re *Wilkes' estate*, 18 Chan. D. 600, it was held that the tenant for life is entitled to have, in addition to the amount he previously received, the income from the £10 per cent. allowed, added to the purchase money for the compulsory taking of the lands from him, for the property is compulsorily taken as much from this tenant for life as for the remainderman.

9. *Compulsory taking.*—After commenting upon the decision of the Select Committee of the House of Lords, 1845, which considered that 50 per cent. upon the original value ought to be given as compensation for the compulsion to which the vendor is bound to submit, Mr. Lloyd, in his work *On the Law of Compensation*, p. 68, adds "that recent experience "has shown that such estimate is an exaggerated one; and 10 per cent. is "considered a sufficient compensation for the compulsory sale in addition "to the assessed value in the case of house property; but in respect of "agricultural lands as much as 25 per cent. is sometimes given." He also thinks that the following would likely be the usual items of a claim in respect of leasehold premises in which a business is carried on, if the premises are taken:—"value of lease, value of fixtures, if trade fixtures; "loss on sale of stock (about 35 per cent. on cost price); cost of removal; "value of good will; and 10 per cent. upon value of lease for compulsory sale. *Ibid*, p. 67.

10. *Expropriation of railway—Compulsory sale.*—The value of a tramway upon a compulsory sale, must be measured by what it would cost to construct it at the date of such sale, subject to a proper deduction in respect of depreciation. *The London County Council v. The London Street Tramways Co.*, (1894), L. R. 2 Q. B. 189.

11. *Expropriation of railway—Value of work done—Allowance for capital expended.*—Where the Crown was, under a special statute (50-51 Viet. ch. 27) empowered to acquire by purchase, surrender or expropriation, the works constructed and the property owned by a company which had constructed a certain line of railway, but had failed for lack of funds to complete the same, and where the Crown was to pay for such road, etc., the amount adjudged by the Court "for the present value of the work done "on the said line of railway by the said company," it was *held* that the statute contemplated the taking of all the works constructed by the company and not a portion thereof: and where a portion only was taken compensation should be assessed in respect of the total value of the works.

That the words "present value of the work done" as contained in section 1 of the said Act, should, in view of the preamble and surrounding circumstances, be construed to mean the value of the works constructed and the property owned by the company at the time of the passing of the Act.

That the word "value" as used in the Act must be taken to mean the value of the property to the company and not to the Government; and that compensation for the taking should be assessed at the fair value of the property at the time contemplated by the Act.

The company were in possession of a right of way that had been acquired by proceedings taken under certain provincial statutes not applicable to the case, and for which the county councils of Cumberland and Colchester had, in aid of the company's undertaking, paid the proprietors whose lands were situated in such counties; and the court held that the company was entitled to compensation therefor, and further to an

allowance for the use of the capital expended in the enterprise. *The Montreal & European Short Line Ry. Co. v. The Queen*, 2 Ex. C.R. 159.

12. *Severance.*—If land has been injured by being severed, the owner will be entitled to compensation for such injury. Lloyd, *On the Law of Compensation*, p. 68.

13. *Prospective capabilities of land.*—The prospective capabilities of land may form, and very often are, a very important element in the estimation of its value. *The Mayor, etc., of the City of Montreal v. Brown*, L. R. 2 App. Cas. 185.

14. *Prospective capabilities—10 % advance on value of property, etc.*—The City of Toronto was in possession of certain lands which it held under a grant from the Crown issued prior to Confederation. Under the provisions of the grant, the lands were to be held by the corporation in trust for the public purposes of the City, and no lease of the same could be made for any term exceeding fifty years. In 1889, the Crown, on behalf of the Dominion, expropriated a portion of such lands. *Held*, that in assessing compensation in expropriation matters the court should consider the value of the property arising from its prospective capabilities; that the compulsory taking is an element for indemnity and that 10 % should be added to the value of the property for such compulsion. *The Queen v. City of Toronto*, Jany. 20th, 1890.

15. *10 per cent. advance for compulsory taking.*—The 10 per cent. advance rule for compulsory taking in expropriation cases, followed in *The Queen v. City of Toronto* (supra No. 14) is recognized in *Lock v. Furze*, 19 C.B.N.S. 96.

16. *Prospective capabilities.*—In assessing damages in cases of expropriation, regard should be had to the prospective capabilities of the property arising from its situation and character. *Paint v. The Queen*, 2 Ex. C.R. 149; 18 Can. S.C.R. 718.

17. *Siding—Potential advantage of railway to remaining property.*—Any advantage that would accrue to a property if a siding connecting the same with the railway were constructed is not to be taken into consideration in assessing compensation, as there is no legal obligation upon the Crown to give such siding, and it might never be constructed. *Charland v. The Queen*, 1 Ex. C.R. 291.

On appeal to the Supreme Court of Canada this judgment was affirmed with costs. 16 Can. S.C.R. 721.

18. *Expropriation—Canadian and English law—Similarity.*—The case of *McPherson v. The Queen*, 1 Ex. C.R. 53, is authority for the similarity between the Canadian and English laws in respect of expropriation matters.

19. *English and French law—Dedication—Similarity.*—The law of the Province of Quebec relating to the doctrine of dedication or destination is the same as the law of England. *Bourget v. The Queen*, 2 Ex. C. R. 2.

20. *Waiver by the Crown.*—Where A. B. had put of record with the Crown Lands Department that by arrangement with the Crown Lands Agent, he had performed settlement duties in respect of a lot of land purchased by him, and subsequently had transferred his rights in the same to C. D., paid all moneys due with interest on the said lot, registered the transfer under 32 Vict. ch. 11, sec. 18 (Q) and the Crown accepted the fees for registering the transfer and for the issuing of the patent,—it was held that the registration of the transfer was a waiver of the right of the Crown to cancel the location ticket for default of performing settlement duties and that no cancellation could be effected by the Crown under such circumstances. *Holland v. Ross*, 19 Can. S. C. R. 566.

21. *Waiver by the Crown.*—The neglect of an importer, whose goods have been seized, to make claim to such goods, by notice in writing as provided for by section 198 of *The Customs Act*, 1883, may be waived by the act of the Minister of Customs in dealing with the goods in a manner inconsistent with an intention on his part to treat them as condemned for want of notice. *Quære:* Does section 198 apply to a case where money is deposited in lieu of goods seized? *The Vacuum Oil Co. v. The Queen*, 2 Ex. C. R. 231.

22. *Waiver by the Crown.* A.B. purchased from the Crown a parcel of land subject to the condition of erecting certain building thereon within a certain time, paid, on the same occasion, portion of the purchase money, and the balance some time after the expiry wherein he was bound to erect the building and before complying with such condition. Such balance was accepted and the officer on receiving it stated, however, that the sale would not be completed until the condition upon which it was made was complied with. On petition praying for a declaration by the court that he was entitled to letters patent for said land: *Held* that the acceptance of this balance, under the circumstances, constituted a waiver of the condition in respect of the time within which it was to be performed, but not of the condition itself, and that inasmuch as the suppliant had not performed such condition, he was not entitled to the relief prayed. *Clarke v. The Queen*, 1 Ex. C. R. 182; and *Canada Central Ry. Co. v. The Queen*, 20 Grant, 273, referred to.

And while the law is that the Crown is not bound by estoppels and no laches can be imputed to it, and there is no reason why it should suffer by the negligence of its officers, yet forfeitures such as accrued in this case may be waived by the acts of Ministers and officers of the Crown. *Atty.-Gen. of Victoria v. Ellershanks*, L.R. 6 P.C. 354; and *Davenport v. The Queen*, 3 App. Cas. 115, referred to. *Peterson v. The Queen*, 2 Ex. C. R. 67.

23. *Farm Crossing.*—The right to have a farm crossing over one of the Government railways is not a statutory right and in awarding damages full compensation for the future as well as for the past should be granted for the want of a farm crossing. *Vezina v. The Queen*, 17 Can. S.C.R. 1.

24. *Farm crossing.* Where lands expropriated for Government railway purposes severed a farm, the owner although not entitled to a farm crossing apart from contract is entitled to full compensation for both future and past damages resulting from the depreciation of his lands by want of such crossing. *Gway v. The Queen*, 2 Ex. C.R. 18; 17 Can. S.C.R. 30.

25. *Farm crossing.*—In expropriation of lands for railway purposes compensation should be assessed both in view of the past and future damages resulting, or which might result, from the want of a crossing. *Kearney v. The Queen*, 2 Ex. C.R. 21; Cassels' Digest, 313.

26. *Farm crossing.*—There is no legal liability upon the Crown to give claimant a crossing over any Government railway, and where the Crown offered by its pleadings to construct a crossing for claimant, the court assessed damages in view of the fact that there was no means of enforcing the performance of such undertaking. (See now 52 Vict. c. 38 s. 3), *Falconer v. The Queen*, 2 Ex. C.R. 82.

27. *Market value.*—In determining the value of lands expropriated for public purposes, the same considerations are to be regarded as in a sale between private parties, the enquiry in such cases being, what from their availability for valuable uses, are the lands worth in the market. As a general rule, compensation to the owner is to be estimated by reference to the use

for which the appropriated lands are suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future. *Boom Co. v. Patterson*, 98 U.S.R. 403.

28. *Value to owner of estate.*—In awarding compensation for property expropriated, the court should consider the value thereof to the owner and not to the authority expropriating the same. *Stebbing v. The Metropolitan Board of Works*, L.R. 6 Q.B. 37, followed. *Paint v. The Queen*, 2 Ex. C.R. 149; 18 Can. S.C.R. 718.

29. *Expropriation—Lands injuriously affected.* Where lands are injuriously affected, no part thereof being taken, the owners are not entitled to compensation under *The Government Railways Act*, 1881, unless the injury (1) is occasioned by an act made lawful by the statutory powers exercised; (2) is such an injury as would have sustained an action but for such statutory powers, and (3) is an injury to lands or some right or interest therein, and not a personal injury or an injury to trade. *The Queen v. Barry*, 2 Ex. C.R. 333. See notes under section 22 of *The Expropriation Act*, *post*.

30. *Construction of public work—Interference with right common to the public.*—Where the Crown, by the construction of a public work, has interfered with a right common to the public, a private owner of real property whose lands, or any right or interest therein, have not been injured by such interference, is not entitled to compensation in the Exchequer Court, although it may happen that the injury sustained by him is greater in degree than that sustained by other subjects of the Crown. *Archibald v. The Queen*, 3 Ex. C.R. 251.

31. *Expropriation—Damages—Nature of user.*—Where lands are taken and others held therewith injuriously affected the measure of compensation is the depreciation in value of the premises damaged assessed not only with reference to the injury occasioned by the construction of the authorized works, but also with reference to the loss which may probably result from the nature of the user. *The Straits of Canseau Marine Ry. Co. v. The Queen*, 2 Ex. C.R. 113.

32. *Expropriation—Minerals—Tests or experiments.*—In a case of expropriation the claimant is not obliged to prove by costly tests or experiments the mineral contents of his land. *Brown v. The Commissioner for Railways*, 15 App. Cas. 240, referred to. Where, however, such tests or experiments have not been resorted to, the court or jury, must find the facts as best it can from the indications and probabilities disclosed by the evidence. *The Queen v. McCurdy*, 2 Ex. C.R. 311.

33. *Compensation paid to grantor.*—Where compensation for all future damages had been paid to J.'s grantor (*auteur*) while he was in possession, no right of action for such damages can accrue to J., unless another expropriation has been made or some new work performed, causing damages of a character not falling within the limits of those arising from the first expropriation. J. must further abide by the easements and servitudes, over and upon the property, created by his grantor (*auteur*). *Jackson v. The Queen*, 1 Ex. C.R. 145

34. *Expropriation—Lands held together.*—Lord Watson, in the case of *Cowper Essex v. The Local Board of Acton*, L.R. 14 App. Cas. 167, held that where several pieces of land owned by the same person are, though not adjoining, so near to each other and so situated that the possession and control of each gives an enhanced value to all of them, they are lands held together within the meaning of *The Lands Clauses Consolidation Act*, 1845, ss. 49 and 63 (8-9 Vict. ch. 18 U.K.); so that if one piece is compul-

sorily taken and converted to uses which depreciate the value of the rest, the owner has a right to compensation for the depreciation.

35. *Loss of Light.*—Damages were allowed to a claimant for loss of light, although he had a legal right to part of it only. In re *London Tilbury and Southend Ry. Co. v. Trustees of the Gower's Walk School*, L. R. 24, Q. B. D. 40.

36. *Damages—Expropriation.* For American authorities where property is damaged for public uses from the establishment and changes of grade, from a railroad changing the surface of a street, construction of viaducts, railroads in street, street railways, etc., etc., see the *American Law Review*, Vol. 25, at pp. 926-939. The article which appears in that publication is from the pen of Mr. F. Hagerman, and concludes with the following remarks, viz: "The word "damaged" in the constitution gives a right "of recovery whenever, by a public work, a damage is done to property, "produced by an interference with a right which the owner or occupier is "entitled to make use of in connection with it, and the loss or impairment "of which renders the property less valuable and where, but for the "legislative authority to do the act, there would be liability under the "general principles of the law in existence at the time, provided that "compensation has neither been made nor waived."

37. *Damage by operation of railway.*—A portion of the claimant's property, although not damaged by the construction of the railway, was injuriously affected by its operation, inasmuch as near a certain point thereon trains emerged suddenly and without warning from a snow-shed, frightening the claimant's horses, and thereby interfering with the prosecution of his work,—it was *held* that this was a proper subject for compensation. *Vezina v. The Queen*, 2 Ex. C. R. 11.

On appeal to the Supreme Court of Canada the amount of compensation was increased on the assumption (for which the factums filed were responsible) that the Judge of the Exchequer Court had excluded as an element for compensation the damages resulting from the operation of the railway. 17 Can. S. C. R. 1.

38. *Increased rate of insurance.*—The damage resulting from the increased risk from fire by the operation of a railway is a proper subject for compensation. *The Straits of Canseau Marine Ry. Co. v. The Queen*, 2 Ex. C. R. 113. The following English cases are authority for the above:—In re *Stockport, etc., Ry. Co.*, L. J. 33 Q. B. 251; *Buccleuch v. The Metropolitan Board of Works*, L. R. 3 Ex. 306; 5 H. L. 418, and approved of in the case of *Cowper Essex v. Local Board of Acton*, 14 App. Cas. 154.

39. *Damages from construction and operation of railway.*—Upon an expropriation of land under the provisions of 50-51 Vict. c. 17, the measure of compensation is the depreciation in the value of the premises assessed not only in reference to the damage occasioned by the construction of the railway, but also in reference to the loss which may probably result from its operation. *McLeod v. The Queen*, 2 Ex. C. R. 106.

40. *Damages in the nature of interest—Rate thereof.*—Upon a bond for the payment of money on a day certain, with interest at a fixed rate down to that day, a further contract for the continuance of the same rate of interest cannot be implied, and thereafter interest is not recoverable as interest, but as damages. *Goodchap v. Roberts*, 14 Ch. D. 49 referred to.

In assessing damages in the nature of interest on a bond payable at a particular place reference should, in general, be had to the rules in force at the place where the same is so payable. *The Queen v. The Grand Trunk Ry. Co.*, 2 Ex. C. R. 132.

41. *Loss of business.*—The loss of profits derivable from the prosecution of a certain business is of a personal character, and cannot be construed as a direct or consequent damage to property within the meaning of sec. 31 of 31 Vict. ch. 12. *Lefebvre v. The Queen*, 1 Ex. C. R. 121.

42. *Expropriation—Value—Prix d'affection.*—In an action brought to set aside the Arbitrators' award made under the provisions of "*The Railway Act*" (R. S. C. ch. 109), it was *held* that the principle to be followed in making an award is that the proprietor shall be left in the same position, financially, as he was before his property was expropriated, without allowing any *prix d'affection*; and therefore when the evidence of the proprietor's witnesses proves that the remnant of the property, added to the sum awarded as compensation, is greater than the price for which the proprietor was willing to sell the whole property before the expropriation, the award must be held to be reasonable and adequate. *Benning v. The Atlantic & North West Ry. Co.*, 5 M. L. R. S. C. 137.

43. *Right to unnavigable water.*—The owner of land through which unnavigable water flows in its natural course is proprietor of the latter by right of accession; it is at his exclusive disposition during the interval it crosses his property, and he is entitled to be indemnified for the destruction of any water power, which has been or may be derivable therefrom. *Lefebvre v. The Queen*, 1 Ex. C.R. 121.

44. *Unity of estate—Severance.*—In assessing damages where land has been expropriated, the unity of the estate must be considered, and if, by the severance of one of several lots so situated that the possession and control of each give an enhanced value to them all, the remainder is depreciated in value, such depreciation is a substantive ground for compensation. *Paint v. The Queen*, 2 Ex. C.R. 149.

45. *Government railway—Boundary ditches—Damages for overflow of water.*—In re *Morin v. The Queen*, 20 Can. S.C.R. 515, it was held, affirming the judgment of the Exchequer Court, 2 Ex. C.R. 396, that under 43 Vict. ch. 8 confirming the agreement of sale by the Grand Trunk Ry. Co. to the Crown of the purchase of the Rivière du Loup branch of their railway, the Crown cannot be held liable for damages caused from the accumulation of surface water to land crossed by the railway since 1879, unless it is caused by acts or omissions of the Crown's servants, and as the damages in the present case appear by the evidence to have been caused through the non maintenance of the boundary ditches of claimant's property, which the Crown is under no obligation to repair or keep open, the claim for damages must be dismissed.

46. *Machinery in mill.*—Under the provisions of Arts. 379 and 380 C. C.L.C., machinery in mills becomes immoveable by destination and forms part of the realty. *Lefebvre v. The Queen*, 1 Ex. C.R. 121.

47. *Buildings and fixtures.*—The Crown, represented by the Commissioners of public works for the Province of Quebec in the year 1851, demised certain lands in the City of Montreal to the plaintiff's predecessors in title for the purpose of being used for the construction of a dock and shipyard for the building, reception and repair of vessels. The lease contained a proviso for its cancellation under certain circumstances, upon the lessors or their successors in office, paying to the "lessees, their executors, "administrators or assigns, the then value (with an addition of ten per "cent. thereon) of all the buildings and fixtures that shall be thereon "erected and belonging to the said lessees;" and it was held that the words "buildings and fixtures" in the proviso were large enough to include not only what were buildings, in the ordinary acceptation of the term, and

the dock itself, but also whatever was accessory to, and necessary to the use of, such buildings and dock. *Grier v. The Queen*, 1 Ex. C.R. 168.

18. *Returning officer—R. S. C. ch. 7—Claims for services of subordinate officers.* A person duly appointed and acting during an election as returning officer under the provisions of *The North-West Territories Representation Act* (R. S. C. c. 7), cannot recover from the Crown for the services of the several enumerators, deputy-returning-officers or other persons employed in connection with such election. *Lucas v. The Queen*, 3 Ex. C.R. 238.

49. *Nature of title.* In assessing compensation to be paid to a claimant whose land has been expropriated, the court will look at the nature of his title as one of the criteria of value. *The Queen v. Currier*, 2 Ex. C.R. 36; *Samson v. The Queen*, 2 Ex. C.R. 30.

50. *Crown's Prerogatives—Priority of payment as single contract creditor.* The Crown claiming as a single contract creditor has a right to priority over other creditors of equal degree. This prerogative privilege belongs to the Crown as representing the Dominion of Canada, when claiming as a creditor of a provincial corporation in a provincial court, and is not taken away in proceedings in insolvency by 45 Vict. ch. 23. *The Queen v. The Bank of Nova Scotia*, 11 Can. S.C.R. 1. But see now *The Bank Act*, 53 Vict. ch. 31, sec. 53.

51. *Rights of Crown in Lower Canada.*—The Crown is bound by the two codes of the Province of Quebec, and can claim no priority except what is allowed by them. Being an ordinary creditor of a bank in liquidation, it is not entitled to priority of payment over its ordinary creditors. *Exchange Bank of Canada v. The Queen*, 11 App. Cas. 157. See No. 8 under sec. 17 of this Act; see also *The Bank Act*, 53 Vict. ch. 31, sec. 53.

52. *Conflict between Codes P. Q.—Crown's preference over chirographic creditors.*—Article 1994 of the Civil Code, L.C., must be construed according to the technical sense of "comptables." And Article 611 of the Code of Civil Procedure, L.C., giving to the Crown priority for all its claims, must be modified so as to be in harmony therewith. Accordingly, by its true construction, the intention of the Legislature was that "in the "absence of any special privilege the Crown has a preference over unprivi"leged chirographic creditors for sums due to it by a defendant being a "person accountable for its money." *Ibid.*

53 *Prerogatives of the Crown.*—The Crown is not bound by sections 100 and 122 of *The Dominion Elections Act*, 1874. The 46th clause of the 7th section of *The Interpretation Act*, whereby it is provided that no provision or enactment in any Act shall affect in any manner or way whatsoever the rights of Her Majesty, her heirs or successors, unless it is expressly stated therein that Her Majesty shall be bound thereby, is not limited or qualified by any exception such as that mentioned in *The Magdalen College Case* (11 Rep. 70 b), that the King is impliedly bound by statutes passed for the general good.....or to prevent fraud, injury or wrong. *The Queen v. Pontiol*, 2 Ex. C. R. 49.

54. *Undertaking by Government to promote legislation—Breach of.*—An order of His Excellency The Governor-General in Council pledging the Government to promote legislation does not constitute a contract for the breach of which the Crown would be liable in damages. *Quebec Skating Club v. The Queen*, 3 Ex. C. R. 387.

55. *Government cheque on deposit account with Bank—Right of payee for collection—Credit entry in payee's books—Reversal of.*—The Dominion

Government having a deposit account of public moneys with the Bank of P. E. I., upon which they were entitled to draw at any time, the Deputy Minister of Finance drew an official cheque thereon for $50,000 which, together with a number of other cheques, he sent to the branch of the Bank of Montreal, at O., at which branch bank the Government had also a deposit account. The said branch bank thereupon placed the amount of the cheque to the credit of the Dominion Government on the books of the bank, the manager thereof endorsing the same in blank and forwarding it to the head office of his bank at Montreal. The cheque was then sent forward by mail from the head office of the Bank of Montreal to the Bank of P. E. I. for collection, but was not paid by the latter bank which, subsequently to the presentment of the cheque, suspended payment generally. And the court held that the Bank of Montreal were mere agents for the collection of this cheque, and that, although the proceeds of the cheque had been credited to the Government upon the books of the bank, it never was the intention of the bank to treat the cheque as having been discounted by them; consequently, as the bank did not acquire property in the cheque and were never holders of it for value, they were entitled on the dishonour of the cheque to reverse the entry in their books and charge the amount thereof against the Government. *Giles v. Perkins*, 9 East. 12; *Ex parte Barkworth*, 2 De G. & J. 191 referred to. *The Queen v. The Bank of Montreal*, 1 Ex. C. R. 154.

56. *Retroactive effect of statutes.* Where vested rights are concerned, statutes shall not have reference to retrospective effect unless expressly so enacted. *McQueen v. The Queen*, 16 Can. S. C. R. 116. On same subject see *Martin v. The Queen*, 20 Can. S. C. R. 240, *and DeKuyper v. Van Dalken*, 3 Ex. C. R. 88

57. *Estoppel.*—The doctrine of estopped cannot be invoked against the Crown. *Humphrey v. The Queen*, 2 Ex. C. R. 386. See *supra* No. 22.

58. *Estoppel Claimant's acquiescence in construction of culvert—Damages.*—B. sought to recover damages for the flooding of a portion of his farm, resulting from the construction of certain works connected with the Intercolonial Railway. The Crown produced a release under B.'s hand given subsequent to the time of the expropriation of a portion of his farm for the right of way of a section of the said railway, whereby he accepted a certain sum "in full compensation and final settlement for de- "privation of water, fence-rails taken, damage by water, and all damages "past, present and prospective arising out of the construction of the Inter- "colonial Railway," and released the Crown "from all claims and de- "mands whatever in connection therewith." It was also proved that, although the works were executed subsequent to the date of this release, they were undertaken at B.'s request and for his benefit, and not for the benefit of the railway, and that, with respect to part of them, he was present when it was being constructed and actively interfered in such construction. It was held that he was not entitled to compensation. And further that the Crown is under no obligation to maintain drains or backditches constructed under 52 Vict. c. 13, s. 4. *Bertrand v. The Queen*, 2 Ex. C.R. 285,

59. *Mandamus against the Crown.*—A mandamus will never under any circumstances be granted where direct relief is sought against the Crown. *McQueen v. The Queen*, 16 Can. S.C.R. 1.

60. *Lien on Logs, etc.*—The lien in favour of the Crown for boomage and slidage dues only attaches to logs that have actually passed through the slides and booms. *Merchants Bank of Canada v. The Queen*, 1 Ex. C.R. 46.

61. *Interference with Arbitrators' award.*—The court will not interfere with any award of the Official Arbitrators where there is evidence to support their findings, and such finding is not clearly erroneous. *Samson v. The Queen*, 2 Ex. C.R. 94.

62. *Offer to settle—Effect thereof.*—Where claimant, for the purpose of effecting a settlement without litigation, had offered to settle his claim for a sum very much below that demanded in his pleadings, the court, while declining to limit the damages to the amount of such offer, relied upon it as a sufficient ground for not adopting the extravagant estimates made by claimant's witnesses. *Falconer v. The Queen*, 2 Ex. C.R. 82.

63. *Assignment of chose in action against the Crown.*—Where a chose in action was assigned, *inter alia*, for the general benefit of creditors, all the parties interested being before the court and the Crown making no objection, the court gave effect to such assignment.

Quære:—In the absence of acquiescence in such an assignment, are the assignee's rights thereunder capable of enforcement against the Crown? *The Queen v. McCurdy*, 2 Ex. C.R. 311.

64. *Minister or officer of the Crown—Power of.*—A Minister or officer of the Crown cannot bind the Crown without the authority of law. *Quebec Skating Club v. The Queen*, 3 Ex. C.R. 387.

65. *Laches of officers of the Crown—Damages.*—Laches cannot be imputed to the Crown, and, except where a liability has been created by a statute, it is not answerable for the negligence of its officers employed in the public service. *Burroughs v. The Queen*, 2 Ex. C. R. 293; 20 Can. S. C. R. 420.

66. *Power of Minister of the Crown.*—Under the 6th section of *The Liquor License Act*, 1883, the boards of license commissioners for the various license districts in the Dominion were empowered to fix the salaries of license inspectors, subject to the approval of the Governor in Council, and the court held that such approval could not be given by a Minister of the Crown, and further that the Crown could not be held liable for any sum in excess of the salary fixed and approved of by the Governor-General in Council. *Ibid.*

67. *Authority of officer of the Crown.*—It was held, affirming the judgment of the Exchequer Court, that where by certain work done by the Government Railway authorities in the City of St. John the pipes for the water supply of the City were interfered with, claimants were entitled to recover for the cost reasonably and properly incurred by their engineer in good faith, to restore their property to its former safe and serviceable condition, under an arrangement made with the Chief Engineer of the Government Railway, and upon his undertaking to indemnify the claimants for the cost of the said work. Strong & Gwynne, JJ. dissenting on the ground that the Chief Engineer had no authority to bind the Crown to pay the damages beyond any injury done. *The Queen v. The St. John Water Commissioners*, 19 Can. S. C. R. 125.

68. *Ordnance lands—Power of Minister of Interior to lease.*—The Minister of the Interior cannot lease or authorize the use of Ordnance lands without the authority of the Governor in Council. R. S. C. c. 22, sec. 4; R. S. C., c. 55, secs. 4 and 5 discussed; *Wood v. The Queen*, 7 Can. S. C. R. 634; *The Queen v. St. John Water Commissioners*, 19 Can. S. C. R. 125; and *Hall v. The Queen*, 3 Ex. C. R. 373, referred to. *Quebec Skating Club v. The Queen*, 3 Ex. C. R. 387.

69. *Destruction of documents—Presumption therefrom—Omnia præsumuntur contra spoliatorem.*—In an action to recover from the Crown a balance of moneys alleged to be due for labour and materials supplied in

respect of certain public works, a question arose as to the correctness of a number of pay-lists or accounts rendered by the suppliant to the Crown. Before the completion of the works a Commission had been appointed to inquire into the manner in which they had been carried on. It was likely that the correctness of such pay-lists or accounts would come in question before such Commission. In view of the opening of the Commission the suppliant burnt his time-books and all the original papers and materials from which his accounts had been compiled as well as his own books of account, by which also the correctness of the accounts rendered by him might have been ascertained. It was *held*, under such circumstances, that the fair presumption from the destruction of such time-books and books of account was that if they had been accessible they would have shown that the accounts rendered by the suppliant were not true accounts. *St. Louis v. The Queen*, 4 Ex. C. R. 185.

70. *Navigation—Obstruction of*—37 *Vict. ch.* 29-43 *Vict. c.* 30.—Where a ship had become a wreck and, owing to her position, constituted an obstruction to navigation, the court *held* that it was not necessary in an information against the owners for the recovery of moneys paid out by the Crown, under the provisions of 37 Vict. c. 2[illegible]d 43 Vict. c. 30, for removing the obstruction, to allege negligence or wrong-doing against the owners in relation to the existence of such obstruction. And the right of the Crown to charge the owner with the expenses of lighting a wrecked ship during the time it continues an obstruction was first given by 49 Vict. c. 36, and such expenses could not be recovered under 37 Vict. c. 29 or 43 Vict. c. 30. *The Queen v. The Mississippi & Dom. Steamship Co.*, 4 Ex. C. R. 298.

71. *Responsibility—Obstruction to navigation.*—Under the Acts above mentioned it is only the owner of a ship or thing at the time of its removal by the Crown who is responsible for the payment of the expenses of such removal. *Ibid.*

See notes under sec. 22 of *The Expropriation Act, post.*

Time to Govern computation of value.

32. The court in determining the amount to be paid to any claimant for any land or property taken for the purpose of any public work or for injury done to any land or property, shall estimate or assess the value or amount thereof at the time when the land or property was taken or the injury complained of was occasioned. (R. S. C. ch. 40, sec. 16.)

See Samson v. The Queen, 2 Ex. C. R. 30.

Stipulations of contract to govern.

33. In adjudicating upon any claim arising out of any contract in writing, the court shall decide in accordance with the stipulations in such contract, and shall not allow compensation to any claimant on the ground that he expended a larger sum of money in the performance of his contract than the amount stipulated for therein, nor shall it allow interest on any sum of money which it considers to be due to such claimant, in the absence of any contract in writing stipulating for payment of such interest or of a statute providing in such a case for the payment of interest by the Crown. (R. S. C. ch. 40, sec. 17.)

1. *Contract—Non-compliance with specification—Waiver by the Crown.*—S. had a contract with the Crown to remove an old pier and to construct, under specifications, a new one in its place. He did not remove the whole of the lower tiers of the old one and erected the new pier upon part of them, and, without any order from the Crown, added extra tiers in order to make a better work. The Crown accepted the work done and raised no question except as to the fair value, which both parties agreed might be ascertained by reference to contract prices. The Crown did not stand on its legal rights and agreed to pay the fair value for the work done. *Held* that it was open to the court under the circumstances, to allow S. the value of such extra work and to deduct from the contract price the value of the work he had not actually done. *Sheridan v. The Queen*, February 10th, 1891.

2. *Contract—Delay by the Crown—Quantum meruit.*—During the North West rebellion the suppliants entered into a contract with the Government for the transport, from Grand Rapids to Selkirk, by means of their steamboats and barges, of a force of 1,585 men and officers under the command of Major-General Middleton. At the time the contract was made, it may fairly be said to have been contemplated by both parties that the service would be performed in about fourteen days. The Government were paying $9, or first-class fare for each officer, and $5, or second-class fare, for each man, which was considered to be a fair compensation; but the suppliants having been delayed for 8 days, by reason of the Major-General waiting at Fort Pitt for Big Bear to come and surrender, it was *held* that as the delay was not anticipated by the parties at the time the contract was made, for the time the suppliants' steamers and barges were lying idle, a *quantum meruit* should be allowed, and it was fixed at $600 per day. *The North West Navigation Co. (Ltd.) v. The Queen*, December 3rd, 1890.

3. *Returning-officer—Paying of clerks.*—A person duly appointed returning-officer and acting as such at an election, under the provisions of *The North West Territories Representation Act* (*R.S.C. ch. 7*) cannot recover, as money paid for the Crown, the wages of a clerk employed by him during part of the time while such services were being rendered; but, on determining the value of his personal services, the fact that he had to engage a clerk to keep his office open, was taken into consideration. *Fitzgerald v. The Queen*, November 7th, 1890.

4. *Agent of Provincial Government—Services—Remuneration.*—A member of the Dominion Parliament was appointed by the Province of British Columbia as their agent at Ottawa and their delegate to London to present to the Queen a petition on behalf of the said Province. By the order in council appointing him such agent, provisions were made to reimburse him for expenses necessarily incurred. He was paid a certain sum in respect thereof, but all remuneration for his services being refused he brought a petition of right to recover compensation for the same. *Held* (by Supreme Court, B.C.) that as there existed no stipulation for the remuneration of his services, the position he occupied was honorary and he was not entitled to any relief. *de Cosmos v. The Queen*, 1 B.C.R. Part II, p. 26.

5. *Breach of contract—Damages.*—K. entered into a contract with the Crown to remove and carry, in barges, to the Lachine Canal, rails to be landed from sea-going vessels, in the harbour of Montreal during the season of navigation of 1885. After having executed a portion of his contract, the Crown, without any complaint to K., cancelled the contract and employed other persons to do the work K. had agreed to perform. *Held*, that K. was entitled to damages for the loss of the profits that would have accrued to him if he had carried such portion of the rails as was carried by other persons during the continuance of his contract. *Kenney v. The Queen*, 1 Ex. C.R. 68.

6. *Breach of contract—Loss of profits—Damages.*—On a breach of contract by the Crown, in giving to persons other than the contractor work contracted for, it was held that the latter was entitled to be paid the difference between the value of the work done by such persons other than himself during the continuation of his contract, and the amount it would have actually cost him, as such contractor to perform that work, without making any deduction for superintendence generally, wear and tear of plant, building, etc., rent, insurance, fuel and taxes. *Boyd v. The Queen*, 1 Ex. C.R. 186.

7. *Contract—Certificate of Engineer—Condition precedent.*—S. entered into a contract with the Crown for the construction of a bridge for a lump sum, and after having procured all the necessary materials for its construction under the specifications, the Crown materially altered the plan, and the Chief Engineer supplied him with new specifications with directions to build the bridge thereunder. The contractor sued the Crown for the additional cost thereof and based his claim upon an alleged new contract entered into when the new specifications were so supplied. On appeal to the Supreme Court of Canada (reversing the judgment of the Exchequer Court per Henry, J.) it was held that the engineer could not make a new contract binding on the Crown; that the claim came within the original contract and the provisions thereof which made the certificate of the engineer a condition precedent to recovery. *Starr v. The Queen*, 17 Can. S.C.R. 118.

8. *Contract, breach of.*—Where claimants sought to recover from the Crown the amount of damages they alleged they were obliged to pay to a contractor who was prevented by the expropriation from completing the construction of a wharf he had undertaken to build for them, it was held that as the contractor had been prevented from completing the construction of the wharf by the exercise of powers conferred by Act of Parliament, the claimants were excused from any liability to him in respect of the breach of contract, and could not maintain any claim against the Crown in that behalf. *Samson v. The Queen*, 2 Ex. C. R. 30.

9. *Contract, construction of—Omission in Schedule.*—A. entered into a contract with the Crown to supply, for a given time, "such quantities "of paper, and of such varieties, as may be required or desired from time "to time for the printing and publishing of the *Canada Gazette*, of the "statutes of Canada, and of such official and departmental and other "reports, forms, documents and other papers as may at any time be "required to be printed and published, or as may be ordered from time to "time by the proper authority therefor, according to the requirements of "Her Majesty in that behalf." Attached to the contract, and made part thereof, were a schedule and specifications showing the paper to be supplied and the price to be paid therefor, but in which no mention was made of double demy,—the paper ordinarily, though not exclusively used for departmental printing. And it was held that notwithstanding this omission, the contractor had agreed to supply the Crown and the Crown by implication had agreed to purchase of the contractor, among other paper, that required for departmental printing. *Clarke v. The Queen*, 2 Ex. C. R. 141.

10. *Breach of contract to issue license—Sale of chattels—Implied warranty.*—A permit, issued under the authority of the Minister of the Interior, under which the purchaser has the right within a year to cut from the Crown domain a million feet of lumber, is a contract for the sale of personal chattels, and such a sale ordinarily implies a warranty of title on the part of the vendor; but if it appears from the facts and circum-

stances that the vendor did not intend to assert ownership, but only to transfer such interest as he had in the thing sold, there is no warranty. The Government of Canada by order in council authorized the issue of the usual annual license to the plaintiff company to cut timber upon the Crown domain, upon certain conditions therein mentioned. The company did not comply with such conditions, but before the expiry of the year during which such license might have been taken out, proceedings were commenced by the Government of Ontario against the company under which it was claimed that the title to the lands covered by the license was vested in the Crown for the use of the Province of Ontario, and that contention was ultimately sustained by the court of last resort. Under such circumstances it was held that there was a failure of consideration which entitled the company to recover the ground-rent paid in advance on the Government's promise to issue such license. *The Saint Catharines Milling & Lumber Co, v. The Queen*, 2 Ex. C. R. 202.

11. *Agreement for conveyance of passengers—Breach thereof—Demurrer.*—Where an information alleged an agreement with Her Majesty whereby in consideration of the conveyance by the I. C. Ry. of certain passengers between certain stations, the defendants agreed to pay Her Majesty, through the proper officer of that railway, the fares or passage money of such passengers at the rate therein mentioned as agreed to between the defendants and such officer. And when the defendants, admitting the agreement as alleged, sought to avoid it by setting up as a defence that such passengers were carried on *bons* in blank signed by one of the defendants only. It was held, on demurrer to the plea, to be no answer to the breach of contract alleged. *The Queen v. Pouliot*, 2 Ex. C. R. 49.

12. *Government contract—Power of Crown Officers and Engineers thereunder.*—In re *O'Brien v. The Queen*, 4 Can. S.C.R. 523., Ritchie, C.J., held that neither the engineer, nor the clerk of the works, nor any subordinate officer in charge of any of the works of the Dominion of Canada, has any power or authority, express or implied, under the law to bind the Crown to any contract or expenditure not specially authorized by the express terms of the contract duly entered into between the Crown and the contractor according to law, and then only in the specific manner provided for by the express terms of the contract.

13. *Contract—Construction—Implied promise.*—A. had a contract to carry Her Majesty's mails along a certain route. In the construction of a Government railway the Crown obstructed a highway used by A. in the carriage of such mails, and rendered it more difficult and expensive for him to execute his contract. After the contract had been fully performed by both parties, A. sought to maintain an action by petition of right for breach thereof on the ground that there was an implied undertaking on the part of the Crown in making such contract that the Minister of Railways would not so exercise the powers vested in him by statute as to render the execution of the contract by A. more onerous than it would otherwise have been. And the court held that such an undertaking could not be read into the contract by implication. *Archibald v. The Queen*, 2 Ex. C.R. 374.

14. *Contract—Public work—Authority of Government engineer to vary terms—Delay.*—Under a contract with the Dominion Government for building a bridge, the specifications of which called for timber of a special kind which the contractor could only procure in North Carolina, the Government was not obliged in the absence of a special provision therefor, to have such timber inspected at that place and was not bound by the act of

the government engineer in agreeing to such inspection, the contract containing a clause that no change in its terms would be binding on the Crown unless sanctioned by order in council.

A provision that the contractor should have no claim against the Crown by reason of delay in the progress of the work arising from the acts of any of Her Majesty's servants was also an answer to a suit by the contractor for damages caused by delay in having the timber inspected. *Mayes v. The Queen*, 23 Can. S.C.R. 154; 2 Ex. C.R. 403.

15. *Contract—Carriage of Mails—Authority of P.M.G. to bind the Crown—R.S.C. c. 35.*—An action will not lie against the Crown for breach of a contract for carrying mails for nine months at the rate of $10,000 a year, made by parol with the Postmaster-General, and accepted by the contractor by letter, notwithstanding it was partly performed, as, if a permanent contract, being for a larger sum than $1,000 it could not be made without the authority of an order in council and if temporary it was revocable at the will of the Postmaster-General. *Humphrey v. The Queen*, 20 Can. S.C.R. 591.

16. *Contracts—Claim for extra work—Certificate of Engineer—Condition precedent.*—O. entered into a contract with the Government of Canada to construct for a lump sum a deep sea wharf, at Halifax, agreeably to the plans in the engineer's office and specifications, and with such directions as would be given by the engineer in charge during the progress of the work. By the 7th clause of the contract no work could be performed, unless "ordered in writing by the engineer in charge before the execution of the "work." O. was authorized by a letter of the Minister of Public Works to make an addition to the wharf, for the additional sum of $18,400. Further extra work, which amounted to $2,781, was performed under another letter from the Public Works Department. The work was completed, and on the final certificate of the Government's engineer in charge of the works, the sum of $9,681, as the balance due, was paid to O., who gave the following receipt, dated 30th April, 1875:—"Received from the Intercolonial Railway, in full, for all amounts against the Government for works under contract, as follows: *Richmond* deep water wharf works for storage of coals, works for bracing wharf, rebuilding two stone cribs, the sum of $9,681." O. sued for extra work, which he alleged was not covered by the payment made on the 30th April, 1875, and also for damages caused to him by deficiency in and irregularity of payments. The petition was dismissed with cost, and a rule *nisi* for a new trial was subsequently moved for and discharged. And it was *held*, affirming the judgment of the court below, that all the work performed by O. for the Government was either contract work within the plans or specifications, or extra work within the meaning of the 7th clause of the contract, and that he was paid in full the contract price, and also the price of all extra work for which he could produce written authority, and that written authority of the engineer and the estimate of the value of the work are conditions precedent to the right of O. to recover payment for any other extra work. *O'Brien v. the Queen*, 4 Can. S.C.R. 529. The following cases are also authority for the above:—*Jones v. The Queen*, 7, Can S.C.R. 570; *Guilbault v. McGreevy*, 18 Can. S.C.R. 609; *The Queen v. McGreevy*, 18 Can. S.C.R. 371; *The Queen v. Starrs*, 17 Can. S.C.R. 118; *Berlinguet v. The Queen*, 13 Can. S.C.R. 26.

17. *Parol contract between Crown and subject—Implied promise by the Crown—Quantum meruit.*—The provisions of sec. 11 of 42 Vict. c. 7 and of the 23rd section of R.S.C. c. 37, do not apply to the case of an executed contract; and where the Crown has received the benefit of work and labour done by it, or of goods or materials supplied to it, or of services

rendered to it by the subject at the instance and request of its officer acting within the scope of his duties, the law implies a promise on the part of the Crown to pay the fair value of the same. *Hall v. The Queen*, 3 Ex. C.R. 373.

18. *Breach of contract—Measure of damages.*—To the general rule as to the measure of damages for the breach of a contract there is an exception as well established as the rule itself, namely, that upon a contract for the sale and purchase of real estate, if the vendor without fraud is incapable of making a good title, the intending purchaser is not entitled to recover compensation in damages for the loss of his bargain. *Bain v. Fothergill*, L. R. 7 H. L. 158; *Flureau v. Thornhill*, 2 Wm. Bl. 1078, referred to. This exceptional rule is confined to cases of contract for the sale of lands, or an interest therein, and does not apply where the conveyance has been executed and the purchaser has entered under covenants express or implied for good title or for quiet enjoyment. *Williams v. Burrell*, 1 C.B. 402; *Lock v. Furze*, L. R. 1 C. P. 441, referred to.

The authorities are not agreed, but it is probable that this exceptional rule as to the measure of damages for the breach of a contract of sale of real estate does not apply where the vendor is able to make a good title and refuses or wilfully neglects to do so. *Engel v. Fitch*, L.R. 3 Q. B. 314; *Robertson v. Dumaresq*, 2 Moo. P. C. N. S. 84, 95 referred to. *Bulmer v. The Queen*, 3 Ex. C.R. 184; 23 Can. S.C.R. 488.

No clause to be deemed comminatory only.

34. No clause in any such contract in which a drawback or penalty is stipulated for on account of the non-performance of any condition thereof, or any neglect to complete any public work or to fulfil any covenant in such contract, shall be considered as comminatory, but it shall be construed as importing an assessment by mutual consent of the damages caused by such non-performance or neglect. (R. S. C. ch. 40, sec. 17.)

FURTHER RULE FOR ADJUDICATORY UPON CLAIMS.

Alteration in or addition to works may be ordered.

[**3.** If the injury to any land or property alleged to be injuriously affected by the construction of any public work may be removed wholly or in part by any alteration in or addition to any such public work, or by the construction of any additional work, and the Crown by its pleadings, or on the trial, undertakes to make such alteration or addition or to construct such work, the damages shall so far as the future is concerned be assessed in view of such undertaking, and the court shall declare that, in addition to any damages awarded, the claimant is entitled to have such alteration or addition made or such work constructed.]

The above section has been added to "*The Exchequer Court Act*" by 52 Vict. ch. 38.

Interest on moneys under Judgment.

[**4.** The Minister of Finance and Receiver-General may allow and pay to any person entitled by the judgment of the court to any moneys or costs, interest thereon at a rate not exceeding four per cent. from the date of such judgment until such moneys or costs are paid.]

This section was added to "*The Exchequer Court Act*" by 52 Vict. ch. 38.

Interest is not allowable against the Crown, except when made payable by statute or by contract. In re *Gosman*, L. R. 17 Ch. D 771; 50 L. J. Ch. 624; 45 L. T. 267; 29 W. R. 793.

Under sec. 29 of *The Expropriation Act*, interest is payable by the Crown on the compensation money from the date of the taking of the land.

Although section 4 above mentioned is in the permissive form, I have reason to believe, the practice invariably followed by the department in expropriation cases has been to pay interest at four per cent. from the date of judgment until payment.

See introduction on this subject *ante* p. 62.

EFFECT OF JUDGMENT OR PAYMENT.

Payment a full discharge.

35. The payment of the amount due by any judgment of the court shall be a full discharge to the Crown of all claim and demand touching any of the matters involved in the controversy. (R. S. U. S. sec. 1092.)

Judgment to bar further claim.

36. Any final judgment against the claimant on any claim prosecuted as provided in this Act shall forever bar any further claim or demand against the Crown arising out of the matters involved in the controversy. (R. S. U. S. sec. 1093.)

EXECUTION.

Issue of writs of execution.

37. In addition to any writs of execution which are prescribed by general rules or orders, the court may issue writs of execution against the person or the goods, lands or other property of any party, of the same tenor and effect as those which may be issued out of any of the superior courts of the Province in which any judgment or order is to be executed; and when, by the law of the Province, an order of a judge is required for the issue of any writ of execution, the judge of the court may make a similar order, as regards like executions to issue out of the court. (R. S. C. ch. 135 sec. 86.)

Provincial Laws to Govern as to Custody Under Process.

38. No person shall be taken into custody under process of execution for debt issued out of the court at the suit of the

Crown, unless he might be taken into custody under the laws of the Province in which he happens to be, in a similar case between subject and subject; and any person taken into custody under such process may be discharged from imprisonment upon the same grounds as would entitle him to be discharged under the laws in force relating to imprisonment for debt in the Province in which he is in custody. (R. S. C. ch. 135, sec. 87.)

Execution of Writs.

39. All writs of execution against real or personal property, as well as those prescribed by general rules and orders as those hereinbefore authorized, shall, unless otherwise provided by general rule or order, be executed, as regards the property liable to execution and the mode of seizure and sale, as nearly as possible in the same manner as similar writs, issued out of the superior courts of the Province in which the property to be seized is situated, are, by the law of the Province, required to be executed; and such writs shall bind property in the same manner as such similar writs, and the rights of purchasers thereunder shall be the same as those of purchasers under such similar writs. (R. S. C. ch. 135, sec. 88.)

Claims to Property Seized—How Disposed of.

40. Every claim made by any person to property seized under a writ of execution issued out of the court, or to the proceeds of the sale of such property, shall, unless otherwise provided by general rule or order, be heard and disposed of, as nearly as may be, according to the procedure applicable to like claims to property seized under similar writs of execution issued out of the courts of the Province. (R. S. C. ch. 135, sec. 89.)

SHERIFFS' FEES.

Sheriffs' and Coroners' Fees.

41. Sheriffs and coroners shall receive and take to their own use such fees as the judge of the Exchequer Court, by general order, shall fix and determine. (R. S. C. ch. 135, sec. 90.)

The Sheriff's remuneration for his attendance on the Exchequer Court is regulated by order in council, the purport of which, with further instruction on the above subject, will be found *post* at Rule 277, and notes thereunder.

GENERAL PROVISIONS.

Process—How Tested.

42. The process of the Exchequer Court shall be tested in the name of the judge of the court and shall run throughout Canada. (R. S. C. ch. 135, sec. 105.)

To Whom Directed—Sheriffs to be Officers of Court—When Coroner Shall Act.

43. The process of the court shall be directed to the sheriff of any county or other judicial division into which any Province is divided; and the sheriffs of the said respective counties or divisions shall be deemed and taken to be *ex officio* officers of the Exchequer Court, and shall perform the duties and functions of sheriffs in connection with the said court; and in any case where the sheriff is disqualified, such process shall be directed to any of the coroners of the county or district. (R. S. C. ch. 135, sec. 105.)

Recognizances—How Taken.

44. Every commissioner for administering oaths in the Supreme Court and in the Exchequer Court of Canada, who resides within Canada, may take and receive acknowledgments or recognizances of bail, and all other recognizances in the Exchequer Court. (R. S. C. ch. 135, sec. 106.)

Enforcement of Orders.

45. An order for payment of money, whether for costs or otherwise, may be enforced by the same writs of execution as a judgment. (R. S. C. ch. 135, sec. 107.)

No attachment for non-payment.

46. No attachment as for contempt shall issue for the non-payment of money only. (R. S. C. ch. 135 sec. 108.)

Application, and payment of moneys.

47. Any moneys or costs awarded to the Crown shall be paid to the Minister of Finance and Receiver-General, and he shall pay, out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada, any moneys or costs awarded to any person against the Crown. (In substitution for R. S. C. ch. 135, sec. 110, and R. S. C. ch. 136, sec. 16.)

Fees to be paid by stamps.

48. All fees payable to the registrar under the provisions of this Act shall be paid by means of stamps, which shall be issued for that purpose by the Minister of Inland Revenue, who shall regulate the sale thereof; and the proceeds of the sale of such stamps shall be paid into the Consolidated Revenue Fund of Canada. (R. S. C. ch. 135, sec. 111.)

Reasons for judgment to be filed.

49. The judge of the court shall file with the registrar a copy of the reasons, if any, given by him for any judgment pronounced by him. (New.)

As to pending cases.

50. Any matter pending in the Exchequer Court when this Act comes into force which has not been fixed or set down for hearing shall be continued under this Act, but any matter which has been heard or partly heard, or fixed or set down for hearing, before any judge of the Supreme Court, acting as a judge of the Exchequer Court, may be continued before such judge to final judgment, who for that purpose may exercise all the powers of the judge of the Exchequer Court. (New.)

Where a petition of right has been demurred to and judgment obtained on such demurrer before a Judge of the Supreme Court, acting as Judge of the Exchequer Court, prior to the passage of 50-51 Vict. c. 16, it was held to be a case fully heard and determined and not one coming within the class of cases referred to as being "partly heard" in section 50 of that statute; and the judge who heard the demurrer refused a motion to amend the petition, made after the passage of such Act, on the ground of want of jurisdiction. *Dunn v. The Queen*, 4 Ex. C. R. 68.

Semble: that the provision in section 50 of *The Exchequer Court Act*, that "any matter which has been heard or partly heard or fixed or set down for hearing before any Judge of the Supreme Court, acting as a Judge of the Exchequer Court, may be continued before such judge to final judgment, who for that purpose may exercise all the powers of the Judge of the Exchequer Court," is not to be construed as an imperative enactment, and does not impose the duty upon a judge before whom a case was instituted before the Act was passed to continue to entertain the case until final judgment, nor does such provision oust the jurisdiction of the Judge of the Exchequer Court in respect of such matter. *Ibid.*

APPEALS FROM THE EXCHEQUER COURT.

Proceedings in appeal—Deposit—Notice—What notice may contain.

[**51.** Any party to any action, suit, cause, matter or other judicial proceeding, in which the actual amount in controversy exceeds five hundred dollars, who is dissatisfied with any final judgment given therein by the Exchequer Court, in virtue of any jurisdiction now or hereafter, in any manner, vested in such court, and who is desirous of appealing against such judgment, may, within thirty days from the day on which such judgment has been given, or within such further time as the judge of such court allows, deposit with the registrar of the Supreme Court the sum of fifty dollars by way of security for costs; and thereupon the registrar shall set the appeal down for hearing before the Supreme Court on the first day of the next session; and the party appealing shall thereupon, within ten days after the deposit, give to the parties affected by the appeal, or their respective attorneys or solicitors, by whom such parties were represented before the judge of the Exchequer Court, notice in writing that the case has been so set down to be heard in appeal as aforesaid; and in such notice the said party so appealing may, if he so desires, limit the subject of the appeal to any special defined question or questions; and the said appeal shall thereupon be heard and determined by the Supreme Court."] (R. S. C., ch. 135, sec. 70.)

By 53 Vict. ch. 35 this section, was substituted for section 51 as it stood in 50-51 Vict. ch. 16. The original section has been amended by striking out, after the third word of the first line thereof, the following words:—"A suit in the Exchequer Court," and substituting therefor "any action, suit, cause, matter or other judicial proceeding;" by striking out, after the words "dissatisfied with," in the third line, and substituting therefor "any final judgment given therein by the Exchequer Court, in virtue of any jurisdiction now or hereafter, in any manner, vested in such court." The words "who is desirous" have been substituted for the word "desirous," in the third line; the words "such judgment" have been substituted for the words "the same" in the fourth line and for the words "such decision" in the fifth line; and this section has been finally amended by adding the words "or solicitors" after the word "attorneys" in the thirteenth line thereof.

On the argument of the appeal in the case of *Carter, Macey & Co. v. The Queen*, the question as to whether, under the provisions of the original section, as it stood before the passing of 53 Vict. ch. 35, an appeal would lie to the Supreme Court of Canada in a case instituted in this court by a Reference under the provisions of sections 182 and 183 of "The Customs Act," (as amended by 51 Vict. ch. 14) having been raised, new legislation was adopted and this section, as now in force, enacted.

Any party appealing from a judgment of this court must notify the Registrar of the Exchequer Court to that effect. (See Rule 262.)

1. *Application for leave to appeal made after expiry of 30 days.*—Where sufficient grounds are disclosed, the time for leave to appeal from a judgment of the Exchequer Court prescribed by the above section 51 may be extended after such prescribed time has expired. (The application in this case was made within three days after the expiry of the thirty days within which an appeal could have been taken). The fact that a solicitor who has received instructions to appeal has fallen ill before carrying out such instructions, affords a sufficient ground upon which an extension may be allowed after the time for leave to appeal prescribed by the statute has expired. Pressure of public business preventing a consultation between the Attorney-General of Canada and his solicitor within the prescribed time for leave to appeal is sufficient reason for an extension being granted, although the application therefor may not be made until after the expiry of such prescribed time. *Clarke v. The Queen*, 3 Ex. C. R. 1.

2. *Special circumstances.*—Where an application was made by the Crown for an extension of time for leave to appeal a long time after the period prescribed therefor in section 51 of 50-51 Vict. ch. 16 (as amended by 53 Vict. ch. 35) had expired and the material read in support of such application did not disclose any special circumstances, grounds or reasons why an extension should be granted, the application was refused. *Maclean, Roger & Co. v. The Queen*, 4 Ex. C.R. 257.

3. *No appeal from order extending time.*—In re *Neill v. Travellers' Insurance Co.*, 9 Ont. App. 54, the Court of Appeal for Ontario held than an appeal will not lie from the order of a judge of that court extending the time for appealing. *Semble*, also that where an appeal is made from the exercise of discretion by a judge, the court should not review his exercise of discretion.

4. For further authorities on the question of extension of time for leave to appeal, see *Wilson's Judicature Act*, 6th Edn., p. 446; the *Annual Practice*, 1893-94, pp. 1033-35; *Chitty's Archibald's Practice*, 14th Edn., p. 978; *Macdonnan's Judicature Acts*, 2nd. Edn., pp. 696-698; and *Holmsted & Langton's Ontario Judicature Acts*, p. 691.

5. For rule on appeal from court with or without a jury, see *The Accomac* [1891] Pr. D. 351, *The Phœnix Insurance Co. v. McGhee*, 18 Can. S.C.R. 73, per Strong, C. J.; and *Jones v. Hough*, 5 Ex. D. 122.

6. *Appeal—Limitation of time—Final judgment.*—On the trial before the Exchequer Court in 1887 of an action against the Crown for breach of a contract to purchase paper from the suppliants no defence was offered and the case was sent to referees to ascertain the damages. In 1891 the report of the referees was brought before the court and judgment was given against the Crown for the amount thereby found due. The Crown appealed to the Supreme Court, having obtained from the Exchequer Court an extension of the time for appeal limited by statute, and sought to impugn on such appeal the judgment pronounced in 1887. And the court held that the appeal must be restricted to the final judgment pronounced in 1891; that an appeal from the judgment given in 1887 could only be brought within thirty days thereafter unless the time was extended as provided by the statute and the extension of the time granted by the Exchequer Court on its face only refers to an appeal from the judgment pronounced in 1891. *Clark v. The Queen*, 21 Can. S. C. R. 650.

No appeal when amount does not exceed $500—Exceptions—Validity of Acts—Cases in which appeal may be allowed—Leave to appeal in such cases.

52. No appeal shall lie from any judgment of the Exchequer Court in any action, suit, cause, matter or other judicial proceeding, wherein the actual amount in controversy does not exceed the sum or value of five hundred dollars, unless such action, suit, cause, matter or other judicial proceeding,—(R. S. C. ch. 135, sec. 29).

(*a.*) Involves the question of the validity of an Act of the Parliament of Canada, or of the Legislature of any of the Provinces of Canada, or of an Ordinance or Act of any of the councils or legislative bodies of any of the Territories or districts of Canada; or— (R. S. C. ch. 40, sec. 24.)

["(*b.*) Relates to any fee of office, duty, rent, revenue or any sum of money payable to Her Majesty, or to any title to lands, tenements or annual rents, or to any question affecting any patent of invention, copyright, trade-mark, or industrial design, or to any matter or thing where rights in future might be bound."]

This subsection (b) has been substituted by 54-55 Vict., ch. 26 sec. 8 for the one in 50-51 Vict. ch. 16, and makes new provisions for appeals in cases relating to patents of invention, copyrights, trade-marks, or industrial designs.

2. Provided that an appeal shall not lie in any case in this section mentioned unless the same is allowed by a judge of the Supreme Court of Canada.

Entry of appeal on list.

[53. Every appeal from the Exchequer Court set down for hearing before the Supreme Court of Canada shall be entered by the registrar on the list for the Province in which the action, matter

or proceeding, the subject of the appeal, was tried or heard by the Exchequer Court,—or if such action, matter or proceeding was partly heard or tried in one Province and partly in another, then on such list as the registrar thinks most convenient for the parties to the appeal.]

This section is entirely new and was introduced by section 9 of 54-55 Vict. ch. 26.

Questions of constitutional law and appeal from the Court of Claims have always the right of way ahead of any other cases before the Supreme Court of the United States.

No Deposit by the Crown.

53. If the appeal is by or on behalf of the Crown no deposit shall be necessary, but the person acting for the Crown shall file with the registrar a notice stating that the Crown is dissatisfied with such decision, and intends to appeal against the same, and thereupon the like proceedings shall be had as if such notice were a deposit by way of security for costs. (New.)

Notwithstanding the amendment of section 51 hereof by substituting the word "judgment" for that of "decision," the latter word is still to be found in the above section.

Semble, per Strong, J., there is nothing in sec. 70 of *The Supreme and Exchequer Courts Act*, confining appeals from the Exchequer Court to a recourse against final judgment only, the word used being "decision," which is applicable as well to rules and orders not final as to final decisions. *Dunjon vs. Marquis*, 3 Can. S. C. R. 252.

It seems also that this word "decision" would cover an appeal from an order of a judge of the Exchequer Court in Chambers discharging a summons to fix a trial. Cassels's Practice of the Supreme Court of Canada, page 79.

These two last decisions would not, however, apply since the amendment of sec. 51 by 53 Vict., ch. 35, although the word "decision" is mentioned in sec. 53.

The rules governing the practice on appeals from this court to the Supreme Court of Canada will be found in Mr. Cassels's valuable work on *The Practice of the Supreme Court of Canada*.

EXAMINATION OF CLAIMS BY OFFICIAL REFEREES.

Reference to an Official Referee.—Examination of Witnesses by a Referee.

54. The head of any Department in connection with the administration of which any claim arises may, instead of referring such claim to the Court for adjudication thereon, refer the same to one of the official referees for examination and report, both as to the matters of fact involved and as to the amount of damages, if any, sustained; and such official referee shall make such examination upon the oath or affirmation of witnesses, and shall report his findings upon the question of fact and upon the amount of damages, if any, sustained and the principles upon which such amounts has been computed. (R. S. C. ch. 40, sec. 11.)

This section is to some extent a continuation of section 11 of *The Revised Statutes of Canada*, chapter 40 (repealed by 50-51 Vict., ch. 16). It has reference to proceedings of an entirely extra-judicial character and which have not been instituted in the court. The effect of this enactment is to place the Official Referees (formerly the Official Arbitrators (*a*)) at the service of the Head of any Department for prosecuting any investigation, and procuring information, in connection with any claim before the Department with a view to acquaint such head with the details of the claim and enable him, in many instances, to arrive at a settlement of the claim out of court.

(*a.*) Two of these have been superannuated and two remain in office as official referees under sec. 11 of this Act.

RULES AND ORDERS.

Rules and orders may be made—Extent and effect thereof—Copies for Parliament—Continuance in force.

[**55.** The judge of the Exchequer Court may, from time to time, make general rules and orders:—

(*a.*) For regulating the procedure of and in the Exchequer Court;

(*b.*) For the effectual execution and working of this Act, and the attainment of the intention and objects thereof;

(*c.*) For the effectual execution and working, in respect to proceedings in such court or before such judge, of any Act giving jurisdiction to such court or judge and the attainment of the intention and objects of any such Act;

(*d.*) For fixing the fees and costs to be taxed and allowed to, and received and taken by, and the rights and duties of the officers of the said court; and—

(*e.*) For awarding and regulating costs in such court in favor of or against the Crown as well as the subject.

2. Such rules and orders may extend to any matter of procedure or otherwise not provided for by such Acts, but for which it is found necessary to provide in order to ensure the proper working or such Acts and the better attainment of the objects thereof; and all such rules and orders which are not inconsistent with the express provisions of such Acts shall have force and effect as if herein enacted; and copies of all such rules and orders shall be laid before both Houses of Parliament, within ten days after the opening of the session next after the making thereof; and such rules and orders shall continue to have force and effect unless during such session an address of either the Senate or House of Commons shall be passed for the repeal of the same, or of any portion thereof.] (R. S. C. ch. 135, sec. 109 and ch 136, sec. 18.)

The above section was substituted by 52 Vict. chap. 38, sec. 2 for sec. 55 of 50-51 Vict. chap. 16.

The effect of the amendment has been to vest in the Judge of the Exchequer Court broader powers respecting the making of general rules

and orders as well for the effectual execution and working of *The Exchequer Court Act*, as also for the effectual execution and working, in respect to proceedings before such court, of any Act giving it jurisdiction.

The power to make rules and orders includes also the power to alter or revoke the same and make others. Sub-sec. 45 of sec. 7 R. S. C. ch. 1.

Suspension of rules and orders.

56. The Governor-in-Council may, by proclamation published in the *Canada Gazette*, or either House of Parliament may, by any resolution passed at any time within thirty days after such rules and orders have been laid before Parliament suspend any rule or order made under this Act; and such rule or order shall, thereupon, cease to have force or effect until the end of the then next session of Parliament. (R. S. C. ch. 136, sec. 18(e).)

AMENDMENTS.

R. S. C., cc. 38, 135 and 136 amended.

57. "*The Government Railways Act*," "*The Supreme and Exchequer Courts Act*," and "*The Petition of Right Act*" are hereby amended in the particulars and to the extent mentioned in Schedule A to this Act. (New.)

REPEAL—OFFICIAL ARBITRATORS.

Repeal—Exchequer Court substituted for Official Arbitrators.

58. Subject to the provisions of "*The Interpretation Act*," the Acts and parts of Acts mentioned in Schedule B to this Act are hereby repealed; and whenever in any Act of the Parliament of Canada, or in any order of the Governor-in-Council, or in any document, it is provided or declared that any matter may be referred to the official arbitrators acting under the "*Act respecting the Official Arbitrators*," or that powers shall be vested in, or duty shall be performed by such arbitrators, such matters shall be referred to the Exchequer Court, and such powers shall be vested in, and such duties performed by it; and whenever the expression "official arbitrators" or "official arbitrator" occurs in any such Act, order or document, it shall be construed as meaning the Exchequer Court. (New.)

Transfer of Pending Cases.

59. All matters pending before such official arbitrators when this Act comes into force shall be transferred to the Exchequer Court and may therein be continued to a final decision in like manner as if the same had in the first instance been referred to the court under the provisions of this Act. (New.)

See Rule 4, which makes provision for matters pending before the Official Arbitrators when *The Exchequer Court Act* came into force.

COMMENCEMENT OF ACT.

When the foregoing provisions shall come into force.

60. The foregoing provisions of this Act shall not have force or effect until a day to be named by the Governor-General by his proclamation. (New.)

The proclamation referred to in this section has been issued on the 1st day of October, 1887, and published in the Canada Gazette on the same day.

SCHEDULE A.

The Government Railways Act.

Manner in which Amended:

Section 2—By striking out paragraph (*d*).

The Supreme and Exchequer Courts Act.

Manner in which Amended:

Section 3—By substituting therefor the following section :—

"3. The court of common law and equity, in and for Canada, now "existing under the name of 'The Supreme Court of Canada,' is hereby "continued under such name, and shall continue to be a court of record."

Section 7—By striking out the words "as judges of both courts."

Section 8—By substituting the words "the court" for the words "the said courts," in the second line thereof.

Section 9—By striking out the words "and of the Exchequer Court."

Section 11—By striking out the words "and of the Exchequer Court."

Section 13—By substituting therefor the following section :—

"13. The Governor in Council may appoint a reporter and an assistant "reporter, who shall report the decisions of the Supreme Court, and who "shall be paid such salaries respectively as the Governor in Council "determines."

Section 15—By striking out the words "and of the Exchequer Court."

Section 16—By striking out the words "and the Exchequer Court."

Section 17—By striking out the words "and Exchequer Court."

Section 18—By striking out the words "or Exchequer Court," and by substituting the word "court" for the words "courts respectively" in the third and fourth lines thereof.

Section 19—By adding thereto after word "Court," in the last line the following words, "and in such case it shall not be necessary for five judges "to be present at the delivery of such judgment."

Section 24—By adding the words following at the end thereof :—

"(*h.*) And in cases in the Provinces of Nova Scotia, New Brunswick "and Prince Edward Island, wherein the sum or value of the matter in "dispute amounts to two hundred and fifty dollars or upwards, in which "the Court of first instance possesses concurrent jurisdiction with a "Superior Court."

Section 25—By striking out the words "as hereinafter provided, and as provided in the Act respecting the official arbitrators" in paragraph (*b.*)

Section 40—By substituting therefor the following section :—

"40. Except as otherwise provided every appeal shall be brought "within sixty days from the signing or entry or pronouncing of the judg- "ment appealed from."

Section 46—By inserting after the word "appeals," in the first line of the second paragraph, the words "by or on behalf of the Crown or."

Section 58—By inserting after the word "Columbia" in the tenth line the words "and from the North-West Territories."

Section 105—By striking out the words "and the process of the Exchequer Court"; by substituting the word "court" for the words "and "Exchequer Courts respectively," and also for the words "said courts."

Section 106—By striking out the words "and in the Exchequer Court" in the last line thereof.

Section 107—By substituting therefor the following section :—

"107. An order in the Supreme Court for payment of money, whether "for costs or otherwise, may be enforced by such writs of execution as the "Court prescribes."

Section 108—By substituting therefor the following section :—

"108. No attachment, as for contempt, shall issue in the Supreme "Court for the non-payment of money only."

Section 109—By substituting therefor the following section :—

"109. The judges of the Supreme Court, or any five of them, may, "from time to time, make general rules and orders for regulating the "procedure of and in the Supreme Court, and the bringing of cases before "it from courts appealed from or otherwise, for empowering the registrar "to do any such thing and to transact any such business and to exercise "any such authority and jurisdiction in respect of the same as, by virtue "of any statute or custom or by the practice of the court, is now or may "be hereafter done, transacted or exercised by a judge of the court sitting "in chambers and as may be specified in such rule or order, and for the "effectual execution and working of this Act, and the attainment of the "intention and objects thereof, and for fixing the fees and costs to be "taxed and allowed to, and received and taken by, and the rights and "duties of the officers of the court, and for awarding and regulating costs "in such court in favor of and against the Crown as well as the subject; "and such rules and orders may extend to any matter of procedure or "otherwise not provided for by this Act, but for which it is found "necessary to provide, in order to insure the proper working of this Act "and the better attainment of the objects thereof; and all such rules and "orders which are not inconsistent with the express provisions of this Act "shall have force and effect as if herein enacted, and copies of all such "rules and orders shall be laid before both Houses of Parliament at the "session next after the making thereof."

Section 110—By substituting therefor the following section :—

"110. Any moneys or costs awarded to the Crown shall be paid to the "Minister of Finance and Receiver-General, and he shall pay, out of any "unappropriated moneys forming part of the Consolidated Revenue Fund "of Canada, any moneys or costs awarded to any person against the "Crown."

Section 112—By substituting therefor the following section :—

"112. The reports of the decisions of the Supreme Court may, if the "Governor in Council so determines, be published by the registrar of the "Supreme Court."

The Petition of Right Act.

Manner in which Amended.

Section 2—By striking out the words "Chief Justice or any" in clause (*b*).

Section 6—By striking out the words "or a judge."

Section 7—By striking out the words "or a judge."

Section 11—By striking out the words "or a judge," and "or judge," wherever they occur in the section, and also the words "or his" in the last line but one thereof.

Section 15—By substituting the word "the" for the word "any" in the sixth line thereof.

SCHEDULE B.

The Revised Statutes of Canada.

Extent of Repeal.

Chapter 40—An Act respecting the Official Arbitrators:—the whole.

Chapter 135—An Act respecting the Supreme and Exchequer Courts:—sections 6, 12, 70, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 and 90.

Chapter 136—An Act respecting proceedings against the Crown by Petition of Right:—sections 9, 10, 16, 17, 18, 19, 20 and 21.

PART OF CHAPTER 135 OF THE REVISED STATUTES OF CANADA RELATING TO THE EXCHEQUER COURT OF CANADA.

CHAPTER 135.

An Act respecting the Supreme and Exchequer Courts, A. D. 1886.

The general provisions of *The Supreme and Exchequer Courts Act* apply to the Exchequer Court so far as they are consistent with *The Exchequer Court Act* and the jurisdiction conferred upon the said Court by any Act of Parliament.

The Revised Statutes of Canada came into force on the 1st day of March, 1887, by proclamation issued on the 24th January, 1887, in pursuance of sec. 4 of 49 Vict., ch. 4.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short Title.

1. This Act may be cited as "*The Supreme and Exchequer Courts Act.*" 38 Vict., ch. 11, sec. 81.

Interpretation—Supreme Court—Exchequer Court.

2. In this Act, unless the context otherwise requires,—

(*a.*) The expression "the Supreme Court," or "the Court" means the Supreme Court of Canada;

(*b.*) The expression "the Exchequer Court" means the Exchequer Court of Canada.

* * * * * * *

SPECIAL JURISDICTION OF SUPREME AND EXCHEQUER COURTS.

Powers to be exercised with consent of Provincial Legislatures.

72. When the Legislature of any Province of Canada has passed an Act agreeing and providing that the Supreme Court and the Exchequer Court, or the Supreme Court alone, as the case may be, shall have jurisdiction in any of the following cases, that is to say:—

First. Of controversies between the Dominion of Canada and such Province;

Second. Of controversies between such Province and any other Province or Provinces which have passed a like Act;

Third. Of suits, actions or proceedings in which the parties thereto, by their pleadings, have raised the question of the validity of an Act of the Parliament of Canada, when, in the opinion

of a judge of the Court in which the same are pending, such question is material;

Fourth. Of suits, actions or proceedings in which the parties thereto, by their pleadings, have raised the question of the validity of an Act of the Legislature of such Province, when, in the opinion of a judge of the Court in which the same are pending, such question is material;

This section and the two sections of this Act next following shall be in force in the class or classes of cases in respect of which such Act so agreeing and providing has been passed. 38 Vict., ch. 11, section 54.

Relations between Crown and Provinces—B.N.A. Act, 1867.—The connection between the Crown and the Provinces has not been severed by *The British North America Act*, 1867, the relation between them is the same as that which subsists between the Crown and the Dominion, in respect of the powers executive and legislative, public property and revenues, as are vested in them respectively. In particular all property and revenues reserved to the provinces by sec. 109 and 126 are vested in Her Majesty as Sovereign head of the Province. *Maritime Bank v. The Receiver-General of New Brunswick*, [1892] A.C. 437.

Proceedings in cases first and secondly mentioned—and in those thirdly and fourthly mentioned—Decision to be sent to Court appealed from.

73. The proceedings in the the cases firstly and secondly mentioned in the next preceding section shall be in the Exchequer Court, and an appeal shall lie in any such case to the Supreme Court; and in the cases thirdly and fourthly mentioned in such section, the judge who has decided that such question is material shall, at the request of the parties, and may, without such request, if he thinks fit, order the case to be removed to the Supreme Court for the decision of such question, and it shall be removed accordingly; and after the decision of the Supreme Court the said case shall be sent back with a copy of the judgment on the question raised, to the court or judge whence it came, to be then and there dealt with as to justice appertains. 38 Vict., ch. 11, secs. 55 and 56; 39 Vict., ch. 26, sec. 17.

The Provinces of Ontario, Nova Scotia, New Brunswick and British Columbia have respectively agreed to the jurisdiction above provided for by s.s. 72 and 73 being exercised. The Province of Ontario by legislation enacted in ch. 42 of *The Revised Statutes of Ontario*, 1887; Nova Scotia, ch. 111 of *The Revised Statutes of Nova Scotia, 5th Series*; New Brunswick, 51 Viet, ch. 9; and British Columbia, ch. 27 of *The Consolidated Acts of British Columbia*, 1888.

To what cases preceding Sections apply.

74. The two sections next preceding shall apply only to cases of a civil nature, and shall take effect in the cases therein provided for respectively, whatever is the value of the matter in dispute, and there shall be no further appeal to the Supreme Court on any point decided by it in any such case, nor on any other point in such case, unless the value of the matter in dispute exceeds five hundred dollars. 38 Viet., ch. 11, sec. 57.

SUPREME AND EXCHEQUER COURTS.

EVIDENCE.

Affidavits.

91. All persons authorized to administer affidavits to be used in any of the superior courts of any province, may administer oaths, affidavits and affirmations in such Province to be used in the Supreme Court or in the Exchequer Court. 38 Vict., ch. 11, sec. 74.

Commissioners for receiving affidavits may be appointed—Style of Commissioner.

92. The Governor in Council may, by commission, from time to time, empower such persons as he thinks necessary, within or out of Canada, to administer oaths and take and receive affidavits, declarations and affirmations in or concerning any proceeding had or to be had in the Supreme Court or in the Exchequer Court; and every such oath, affidavit, declaration or affirmation so taken or made shall be as valid and of the like effect, to all intents, as if it had been administered, taken, sworn, made or affirmed before that one of the said courts in which it is intended to be used, or before any judge or competent officer thereof in Canada:

2. Every commissioner so empowered shall be styled "a commissioner for administering oaths in the Supreme Court and in the Exchequer Court of Canada." 39 Vict., ch. 26, s. 10.

List of Commissioners to administer Oaths, etc., for use in the Supreme and Exchequer Courts of Canada.

NAME.	RESIDENCE.	DATE OF COMMISSION.
Robert Cassels	Ottawa	19 Aug., 1876
George Duval	Ottawa	19 " "
Winslow Warren	Boston, Mass., U.S.A.	13 Dec., 1886
Louis Arthur Audette	Ottawa, Ont.	30 Jan., 1888
Charles Morse	Ottawa, Ont.	26 April, 1889
Robert Tuthill Litton	Melbourne, Colony of Victoria	3 Jan., 1890
Frank John Leslie	Liverpool, Eng.	13 April, 1891
Frederick Elliott Grant	Melbourne, Colony of Victoria	1 June, 1891
John Proffitt	Westminster, Eng.	14 July, 1891
James Dunbar	Quebec, Que.	25 April, 1892
Lewis W. DesBarres	Halifax, N. S.	25 " "
Robert O. Stockton	St. John, N. B.	25 " "
John Augustus Longworth	Charlottetown, P. E. I.	25 " "
James Charles Prevost	Victoria, B. C.	25 " "
John Bruce	Toronto, Ont.	25 " "
Louis Henri Collard	Montreal, Que.	25 " "
Geoffrey Henry Walker	Winnipeg, Man.	25 " "
Dixie Watson	Regina, N. W. T.	25 " "
C. Gardner Johnson	Vancouver, B. C.	25 " "
Edwin R. Rogers	Calgary, N. W. T.	25 " "
W. E. Peters	Sydney, C. B., N. S.	2 June, "
H. F. A. Gourlay	Melbourne, Colony of Victoria	25 April, "
Frederick W. Walker	Sydney, New South Wales	7 Feb., 1894
		23 " 1895

Before whom affidavits, etc., may be made out of Canada—Their effect.

93. Any oath, affidavit, affirmation or declaration, administered, sworn, affirmed or made out of Canada, before any commissioner authorized to take affidavits to be used in Her Majesty's High Court of Justice in England, or before any notary public, and certified under his hand and official seal, or before the mayor or chief magistrate of any city, borough or town corporate in Great Britain or Ireland, or in any colony or possession of Her Majesty, out of Canada, or in any foreign country, and certified under the common seal of such city, borough or town corporate, or before a judge of any court of supreme jurisdiction in any colony or possession of Her Majesty or dependency of the Crown out of Canada, or before any consul, vice-consul, acting consul, pro-consul or consular agent of Her Majesty exercising his functions in any foreign place, and certified under his official seal, concerning any proceeding had or to be had in the Supreme Court or Exchequer Court, shall be as valid and of like effect, to all intents, as if it had been administered, sworn, affirmed or made before a commissioner appointed under this Act. 39 Vict., ch. 26, s. 12.

No proof required of signature or seal of Commissioner, etc.

94. Every document purporting to have affixed, imprinted or subscribed thereon or thereto, the signature of any commissioner appointed under this Act or the signature of any person authorized to take affidavits to be used in any of the superior courts of any Province, or the signature of any such commissioner authorized to receive affidavits to be used in Her Majesty's High Court of Justice in England, or the signature and official seal of any such notary public, or the signature of any such mayor or chief magistrate, and the common seal of the corporation, or the signature of any such judge, and the seal of the court or the signature and official seal of any such consul, vice-consul, acting consul, pro-consul or consular agent, in testimony of an oath, affidavit, affirmation or declaration, having been administered, sworn, affirmed or made by or before him, shall be admitted in evidence without proof of any such signature or seal being the signature or signature and seal of the person whose signature or signature and seal the same purport to be, or of the official character of such person. 39 Vict. ch. 26, s. 13.

Informality not to be an objection in the discretion of the judge—nor to be set up as defence in case of perjury.

95. No informality in the heading or other formal requisites of any affidavit, declaration or affirmation, made or taken before any person, under any provision of this or any other Act, shall be an objection to its reception in evidence in the Supreme Court or the Exchequer Court, if the court or judge before whom it is

tendered thinks proper to receive it; and if the same is actually sworn to, declared or affirmed by the person making the same before any person duly authorized thereto, and is received in evidence, no such informality shall be set up to defeat an indictment for perjury. 39 Vict., ch. 26, s. 15.

Examination on interrogatories or by commission of persons who cannot conveniently attend—Interpretation—Witness.

96. If any party to any proceeding had or to be had in either the Supreme Court or the Exchequer Court, is desirous of having therein the evidence of any person, whether a party or not, or whether resident within or out of Canada, the court or any judge thereof, if in its or his opinion it is, owing to the absence, age or infirmity, or the distance of the residence of such person from the place of trial, or the expence of taking his evidence otherwise, or for any other reason, convenient so to do, may, upon the application of such party, order the examination of any such person upon oath, by interrogatories or otherwise, before the registrar of the court, or any commissioner for taking affidavits in the court, or any other person or persons to be named in such order, or may order the issue of a commission under the seal of the court for such examination; and may, by the same or any subsequent order, give all such directions touching the time, place and manner of such examination, the attendance of the witnesses and the production of papers thereat, and all matters connected therewith, as appears reasonable:

2. The person, whether a party or not, to be examined under the provisions of this Act, is hereinafter called a "witness." 39 Vict. ch. 26, s. 1.

Duty of persons taking such examination.

97. Every person authorized to take the examination of any witness, in pursuance of any of the provisions of this Act, shall take such examination upon the oath of the witness, or upon affirmation, in any case in which affirmation instead of oath is allowed by law. 39 Vict., ch. 26, s. 2, *part*;—40 Vict. ch. 22, s. 1.

Further examination may be ordered—Penalty for non-compliance.

98. The Supreme Court or Exchequer Court, or a judge thereof, may, if it is considered for the ends of justice expedient so to do, order the further examination, before either the court or a judge thereof, or other person, of any witness; and if the party on whose behalf the evidence is tendered neglects or refuses to obtain such further examination, the court of judge, in its or his discretion, may decline to act on the evidence. 39 Vict., ch. 26, s. 3.

Notice to adverse party.

99. Such notice of the time and place of examination as is prescribed in the order, shall be given to the adverse party. 39 Vict. ch. 26, s. 4.

Neglect or refusal to attend to be deemed contempt of court—As to production of papers, etc.

100. When any order is made for the examination of a witness, and a copy of the order, together with a notice of the time and place of attendance, signed by the person or one of the persons to take the examination, has been duly served on the witness within Canada, and he has been tendered his legal fees for attendance and travel, his refusal or neglect to attend for examination or to answer any proper question put to him on examination, or to produce any paper which he has been notified to produce, shall be deemed a contempt of court and may be punished by the same process as other contempts of court; but he shall not be compelled to produce any paper which he would not be compelled to produce, or to answer any questions which he would not be bound to answer in court. 39 Vict, ch 16, s. 5;—40 Vict., ch. 22, s. 2.

Effect of consent of parties.

101. If the parties in any case pending in either of the said courts consent, in writing, that a witness may be examined within or out of Canada by interrogatories or otherwise, such consent and the proceedings had thereunder shall be as valid in all respects as if an order had been made and the proceedings had therennder. 39 Vict. ch. 26, s. 6.

Return of examinations taken in Canada—Use thereof.

102. All examinations taken in Canada, in pursuance of any of the provisions of this Act, shall be returned to the court; and the depositions, certified under the hands of the person or one of the persons taking the same, may, without further proof, be used in evidence, saving all just exceptions. 39 Vict., ch. 26, s. 7.

And of those taken out of Canada—Use thereof.

103. All examinations taken out of Canada, in pursuance of any of the provisions of this Act, shall be proved by affidavit of the due taking of such examination, sworn before some commissioner or other person authorized under this or any other Act to take such affidavit, at the place where such examination has been taken, and shall be returned to the court; and the depositions so returned, together with such affidavit, and the order or commission, closed under the hand and seal of the person or one of the persons authorized to take the examination, may, without further proof, be used in evidence, saving all just exceptions. 39 Vict., ch. 26, s. 8.

Reading examination.

104. When any examination has been returned, any party may give notice of such return, and no objection to the examination being read shall have effect, unless taken within the time and in the manner prescribed by general order. 39 Vict., ch. 26, s. 9.

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JURISDICTION

UNDER

SPECIAL ACTS.

1.—THE PETITION OF RIGHT ACT.
2.—THE EXPROPRIATION ACT.
3.—THE PATENT ACT. (*Part.*)
4.—THE COPYRIGHT ACT. (*Part.*)
5.—THE TRADE-MARK AND DESIGN ACT. (*Part.*)
6.—THE CUSTOMS ACT. (*Part.*)
7.—THE CANADA EVIDENCE ACT, 1893.

NOTE.—For the sake of convenience it was thought advisable to give here those parts of the Acts relating to Patent of Invention, Copyright, Trade-Mark, and Customs, which deal with jurisdiction, procedure and evidence, together with such other sections as have a general bearing upon the whole of the respective Acts.

The Petition of Right Act.

(*As amended by* 50-51 *Vict., ch.* 16, *schedules A and B.*)

REVISED STATUTES OF CANADA.

Chapter 136.

A.D. 1886. An Act Respecting proceedings against the Crown by Petition of Right.

The Revised Statutes of Canada came into force on the 1st day of March, 1887, by proclamation issued on the 24th of January, 1887, in pursuance of sec. 4 of 49 Vict., ch. 4.

The first time the Parliament of Canada legislated on the subject of petitions of right was in the year 1875, when the Act 38 Vict., ch. 12, was passed, and jurisdiction to try suits by petition of right against the Crown in right of the Dominion was therein given to the Superior Courts of the several Provinces. In the following session of Parliament (1876) the establishment of the Exchequer Court was provided for, and the Act of 1875 was entirely repealed and superseded by 39 Vict., ch. 27, which gave jurisdiction to the Exchequer Court in respect of petitions of right in Dominion matters. This last Act (39 Vict., ch. 27) was subsequently re-enacted in *The Revised Statutes of Canada* under chapter 136, which, at the present time with the amendments made to the same by schedules A and B of 50-51 Vict., ch. 16, constitute the Act in force.

The practice and procedure relating to petitions of right in England are now regulated by 23-24 Vict. ch. 34. Section 18 thereof provides, however, that nothing contained in this Act shall prevent a suppliant from proceeding as before the passing of the same. The Act regulated the practice, but not the law; and therefore the jurisprudence established prior to the passing of the statute has not been interfered with by this new legislation.

For the origin of the remedy by petition of right, the liability of the Crown thereunder from the earliest times and a brief discussion of some of the leading cases on the subject *see* Introduction to this book, *ante* p. 48 *et seq.*—Under sections 15 and 16 of *The Exchequer Court Act* printed ante p. p. 73, 76, will be found jurisprudence bearing upon the subject of petition of right.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title.

1. This Act may be cited as "*The Petition of Right Act.*" 39 Vict., ch. 27, s. 22.

Interpretation—Court—Judge—Relief.

2. In this Act, unless the context otherwise requires :—

(*a.*) The expression "court" means the Exchequer Court of Canada ;

(*b.*) The expression "judge" means the judge of the said court ;

As amended by 50-51 Vict., ch. 16, sch. A, by striking out after the words "means the" the words "chief justice or any."

(*c.*) The expression "relief" includes every species of relief claimed or prayed for in a petition of right, whether a restitution of any incorporeal right or a return of lands or chattels, or a payment of money, or damages, or otherwise. 39 Vict., ch. 27, s. 21.

See notes under sec. 15 of 50-51 Vict., ch. 16.—*ante* p. 73.

Form of petition of Right.

3. A petition of right may be addressed to Her Majesty to the effect of the form A in the schedule to this Act. 39 Vict., ch. 27, sec. 2.

It is customary in Canada to call the person presenting a petition of right the "suppliant," and the Crown the "respondent." A similar practice exists in England. See Clode on *petition of right*, page 1.

To be left for Governor's fiat.

4. The petition shall be left with the Secretary of State of Canada, for submission to the Governor General, so that he may consider it and, if he thinks fit, grant his fiat that right may be done ; and nothing shall be payable by the suppliant on leaving or upon receiving back the petition. 39 Vict., ch. 27, s. 3.

Duty of King's advisers in respect of Petition of Right.—Semble it is not competent to the King, or rather to his responsible advisers, to refuse capriciously to put into a due course of investigation any proper question raised on a petition of right. *Ryves v. The Duke of Wellington*, 9 Beav. 579.

When and how to be filed.

5. Upon the Governor General's fiat being obtained, the petition and fiat shall be filed in the Exchequer Court of Canada, which Court shall have exclusive original cognizance of such petitions, and thereafter a petition and fiat shall be left at the office of the Attorney General of Canada, with an indorsement thereon to the effect of the form B in the schedule to this Act. 39 Vict., ch. 27, s. 4.

Time for filing statement in defence.

6. There shall be no preliminary inquisition finding the truth of the petition, or the right of the suppliant, but the state-

ment in defence or demurrer, or both, shall be filed within four weeks after service of the petition, or such further time as is allowed by the Court. 39 Vict., ch. 27, s. 5.

As amended by 50-51 Vict., ch. 16, sch. A. The words " or a judge " have been struck out at the end of the original section.

Service on other parties affected by the petition—No scire facias.

7. If the petition is presented for the recovery of any real or personal property, or any right in and to the same, which has been granted away or disposed of by or on behalf of Her Majesty or Her predecessors, a copy of the petition and fiat, indorsed with a notice to the effect of the form C in the schedule to this Act, shall be served upon or left at the last or usual or last known place of abode of the person in the possession or occupation of such property or right; and it shall not be necessary to issue any *scire facias* or other process to such person for the purpose of requiring him to file his statement in defence, but if he intends to contest the petition he shall, within four weeks after such copy has been so served or left, or within such further time as is allowed by the Court, file his statement of defence or demurrer, or both. 39 Vict., ch. 27, s. 6.

As amended by 50-51 Vict., ch. 16, sch. A by striking out the words "or a judge " in the last but one line thereof. See Clode on *Petition of Right*, at pages 28-30, where the subject matter of the above section is dealt with.

On the subject of joining persons other than the Crown as respondents to a petition of right, see *Kirk v. The Queen*, L.R. 14, Eq. 558.

What defence can be raised.

8. The statement of defence or demurrer may raise besides any legal or equitable defences in fact or in law available under this Act, any legal or equitable defences which would have been available if the proceeding had been a suit or action in a competent court between subject and subject; and any grounds of defence which would be sufficient on behalf of Her Majesty may be alleged on behalf of any such person as aforesaid. 39 Vict., ch. 27, s. 7.

9.—Repealed.

This section which read as follows, viz:

" 9. Every issue of fact or assessment of damages to be tried or made " under this Act shall be tried or made by a judge without a jury. 39 V., " c. 27, s. 8," has been repealed by 50-51 Vict., ch. 16, Sch. B.

Section 24 of " *The Exchequer Court Act*," now provides that issues of fact and inquisitions in the Exchequer Court shall be tried by the judge without a jury.

10.—Repealed.

This section which read as follows, viz:—

"10. The trial of any issue of fact or assessment of damages may, "by order of the court or a judge, take place partly at one place and "partly at another; and the evidence of any witness may, by like order, "be taken by commission or on examination or affidavit. 39 V., c. 27, s. "9," has been repealed by 50-51 Vict. ch. 16, Sch. B. and is now re-enacted in section 25 of *The Exchequer Court Act*.

Judgment by default—May be set aside on terms.

11. In case of default, on behalf of Her Majesty or of such other person as aforesaid, to file a statement in defence or demurrer in due time, the suppliant may apply to the court for an order that the petition may be taken as confessed; and the court may, on being satisfied that there has been such failure, order that the petition be taken as confessed as against Her Majesty, or such other person, and thereupon the suppliant may have judgment, but such judgment may afterwards be set aside by the court in its discretion, upon such terms as to the court seem fit. 39 V., c. 27, s. 10

As amended, by 50-51 Vict. ch. 16, Sch. A, by striking out the words "or a judge," and "or judge," wherever they occur in this section, and also the words "or his" in the last line but one thereof.

Form of Judgment.

12. The judgment on every petition of right shall be that the suppliant is not entitled to any portion, or that he is entitled to the whole or to some specified portion of the relief sought by his petition, or to such other relief, and upon such terms and conditions, if any, as are just. 39 V., c. 27, s. 11.

For form of judgment see Schedule O to the Rules of Court printed in this volume.

Effect of Judgment for Suppliant.

13. In all cases in which the judgment commonly called a judgment of *amoveas manus*, was formerly given in England upon a petition of right, a judgment that the suppliant is entitled to relief, as herein provided, shall be of the same effect as such judgment of *amoveas manus*. 39 V., c. 27, s. 12.

Costs may be Awarded to Suppliant.—Recovery thereof.

14. Upon any such petition of right, the suppliant shall be entitled to costs against Her Majesty, and also against any other person appearing or pleading, or answering to any such petition of right, in like manner and subject to the same rules, regulations and provisions, restrictions and discretion, so far as they are

applicable, as are or may be usually adopted or in force in respect to the right to recover costs in proceedings between subject and subject; and for the recovery of any such costs from any such person other than Her Majesty, appearing or pleading, or answering, in pursuance hereof, to any such petition of right, such and the same remedies and writs of execution as are authorized for enforcing payment of costs upon rules, orders, decrees or judgments, in personal actions between subject and subject, shall and may be persecuted, sued out and executed on behalf of such suppliant. 39 V., c. 27, s. 17, *part*.

Judgment for Relief or Order for Costs to Suppliant to be certified to Minister of Finance.

15. Whenever, on a petition of right, judgment is given that the suppliant is entitled to relief and there is no appeal, and whenever, upon appeal, judgment is affirmed or given that the suppliant is entitled to relief, and whenever any rule or order is made, entitling the suppliant to costs, the judge shall, upon application after the lapse of fourteen days from the making, giving, or affirming of such judgment, rule or order, certify to the Minister of Finance and Receiver General the tenor and purport of the same, to the effect of the form D in the schedule to this Act; and such certificate may be sent to, or left at the Department of Finance. 39 V., c. 27, s. 17, *part*.

The original section has been amended by 50-51 Vict, ch. 16. Sch. A, by substituting the word "the" for the word "any" in the sixth line thereof. See Rule No. 194.

16 and **17** Repealed.

These sections which read as follows, viz:—

"16. The Minister of Finance and Receiver-General shall pay out of "any moneys in his hands for the time being lawfully applicable thereto, "or which are thereafter voted by Parliament for that purpose, the "amount of any moneys or costs which have been so certified to him to "be due to any suppliant. 39 V., c. 27, s. 18."

"17. Any costs adjudged to Her Majesty on a petition of right shall "be paid to the Minister of Finance and Receiver-General. 39 V., c. 27, "s. 16,"—have been repealed by 50-51 Vict. ch. 16, Sch. B, and re-enacted in section 47 of *The Exchequer Court Act*.

18.—Repealed.

This section which read as follows, viz:—

"18. The judges of the Supreme Court, or any five of them, may, "from time to time, make general rules and orders for regulating, in every "particular, the pleadings, practice, procedure and costs on petitions of "right, and for the effectual execution and working of this Act and the "attainment of the intention and object thereof; and such rules and "orders may extend as well to matters provided for as to any matter not "provided for by this Act, but for which it is found necessary to provide, "in order to insure the proper working of this Act and the better attain-

" ment of the objects thereof, and all such rules and orders which are
" consistent with such express provisions of this Act as are not subject to
" alteration by rules or orders, shall have the force and effect of law, and
" copies of all such rules and orders shall be laid before both Houses of
" Parliament at the next session thereof :

" 2. The Governor in Council may, by proclamation published in the
" *Canada Gazette*, or either House of Parliament may, by any resolution
" passed at any time within thirty days after such rules and orders have
" been laid before Parliament, suspend any rule or order made under this
" Act ; and such rule or order shall, thereupon, cease to have force or
" effect until the end of the then next session of Parliament. 39 Vict., ch.
" 27, s. 14," has been repealed by 50-51 Vict., ch. 16, sch. B.

The powers given to the Judges of the Supreme Court of Canada under the above section are now vested in the Judge of the Exchequer Court under sections 55 and 56 of "*The Exchequer Court Act*" as amended by 52 Vict. ch. 38.

19.—Repealed by 50-51 Vict., ch. 16, sch. B.

The original section read as follows, viz :—

" 19. Unless it is otherwise provided, either by this Act or by general
" rules and orders made under the authority of this Act, the rules of
" pleading, practice and procedure in force with regard to petitions of
" right in England shall, as to all matters, including the question of costs,
" so far as applicable, and unless the court or a judge otherwise orders,
" apply and extend to a petition of right under this Act. 39 Vict., ch. 27,
" s. 15."

The subject matter of this section has been re-enacted in section 21 of *The Exchequer Court Act*.

20.—Repealed by 50-51 Vict., ch. 16, sch. B.

The original section read as follows, viz :—

" 20. All the provisions of "*The Supreme and Exchequer Courts
" *Act*" not inconsistent with this Act, shall extend and apply to the juris-
" diction by this Act conferred, in like manner as if such jurisdiction had
" been conferred on the Exchequer Court by the said Act. 39 Vict., ch.
" 27, s. 13."

The above section was apparently repealed because it had become unnecessary.

21.—Repealed.

The original section which read as follows, viz :—

" 21. Nothing in this Act contained shall,—

" (1.) Prejudice or limit, otherwise than is herein provided, the rights,
" privileges or prerogatives of Her Majesty or Her successors ; or—

" (2.) Prevent any suppliant from proceeding as before the passing of
" this Act : or—

" (3.) Give to the subject any remedy against the Crown,—

" (*a.*) In any case in which he would not have been entitled to such
" remedy in England under similar circumstances, by the laws in force
" there, prior to the passing of an Act of the Parliament of the United
" Kingdom, passed in the session held in the twenty-third and twenty-
" fourth years of Her Majesty's reign, chapter thirty-four, intituled "*An
" *Act to amend the law relating to Petitions of Right, to simplify the pro-
" *ceedings and to make provisions for the costs thereof ;*" or—

"(*b.*) In any case in which, either before or within two months after "the presentation of the petition, the claim is, under the statutes in that "behalf, referred to arbitration by the head of the proper department, "who is hereby authorized, with the approval of the Governor in Council, "to make such reference upon any petition of right. 39 Vict., ch. 27, s. 19." has been repealed by 50-51 Vict., ch. 16, sch B, and the subject matter thereof has been practically re-enacted in sections 15 and 23 of *The Exchequer Court Act*.

The repeal of the Official Arbitrators' Act, (R.S.C., ch. 40,) by 50-51 Vict., ch. 16, would also explain the repeal of subsection (b) to the above section.

The several sections of this Act which were repealed under the provisions of 50-51 Vict., ch. 16, were so repealed either in view of the fact that the new Exchequer Court Act covered the same ground, or because the enactments of these sections were deemed unnecessary in view of the larger and wider jurisdiction given to the Exchequer Court.

SCHEDULE.

PETITION OF RIGHT.

Form A.

In the Exchequer Court of Canada.

To the Queen's Most Excellent Majesty:

County (*or* district) of (*place proposed for trial*) to wit:

The humble petition of A. B., of , showeth that (*state with convenient certainty the facts on which petitioner relies as entitling him to relief*).

Conclusion.

Your suppliant therefore humbly prays that (*state the relief claimed*).

Dated the day of , A.D.

(Signed) A. B.

or C. D., Counsel for A. B.

Form B.

The suppliant prays for a statement in defence on behalf of Her Majesty, within four weeks after the date of service hereof, or otherwise that the petition may be taken as confessed.

Form C.

To A. B.:

You are hereby required to file a statement in defence to the within petition in Her Majesty's Exchequer Court of Canada, within four weeks after the date of service hereof.

Take notice, that if you fail to file a statement in defence or demurrer in due time, the said petition may, as against you, be ordered to be taken as confessed.

Dated the day of A. D.

Form D.

To the Honourable the Minister of Finance and Receiver General:

Petition of right of A.B. in Her Majesty's Exchequer Court of Canada, at

I hereby certify, that on the day of A.D. , it was, by the said court adjudged (*or* ordered) that the above named suppliant was entitled to, &c.

(*Judge's signature*).

See also Form under Rule 194.

The Expropriation Act.

52 VICTORIA.

CHAPTER 13.

An Act respecting expropriation of lands.

[*Assented to 2nd May*, 1889.]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short Title.

1. This Act may be cited as "*The Expropriation Act.*"

Interpretation—Minister—Department—Superintendent—Public Works—Conveyance—Land—Lease.

2. In this Act, unless the context otherwise requires,—

(*a.*) The expression "Minister" means the head of the department charged with the construction and maintenance of the public work;

(*b.*) The expression "department" means the department of the Government of Canada charged with the construction and maintenance of the public work;

(*c.*) The expression "superintendent" means the superintendent of the public work of which he has, under the Minister, the charge and direction;

(*d.*) The expression "public work" or "public works" means and includes the dams, hydraulic works, hydraulic privileges, harbors, wharves, piers, docks and works for improving the navigation of any water—the lighthouses and beacons—the slides, dams, piers, booms and other works for facilitating the transmission of timber—the roads and bridges, the public buildings, the telegraph lines, Government railways, canals, locks, dry-docks, fortifications and other works of defence, and all other property, which now belong to Canada, and also the works and properties acquired, constructed, extended, enlarged, repaired or improved at the expense of Canada, or for the acquisition, construction, repairing, extending, enlarging or improving of which any public money is voted and appropriated by Parliament, and every work required for any such purpose—but not any work for which money is appropriated as a subsidy only;

(*e.*) The expression "conveyance" includes a "surrender" to the Crown; and any conveyance to Her Majesty, or to the Minister, or any officer of the department, in trust for or to the use of Her Majesty, shall be held to be a surrender;

(*f.*) The expression "land" includes all granted or ungranted, wild or cleared, public or private lands, and all real property, messuages, lands, tenements and hereditaments of any tenure, and all real rights, easements, servitudes and damages, and all other things done in pursuance of this Act, for which compensation is to be paid by Her Majesty under this Act;

(*g.*) The expression "lease" includes any agreement for a lease.

POWER TO TAKE LAND, &c.

Power of the Minister—Entering lands, etc. Taking possession—Deposit and removal of materials—Temporary roads—Drains—Changing course of streams, &c.—Proviso—Alteration of water pipes, &c.

3. The Minister may, by himself, his engineers, superintendents, agents, workmen and servants,—

(*a.*) Enter into and upon any land to whomsoever belonging, and survey and take levels of the same, and make such borings, or sink such trial pits as he deems necessary for any purpose relative to the public work;

(*b.*) Enter upon and take possession of any land, real property, streams, waters and watercourses, the appropriation of which is, in his judgment, necessary for the use, construction, maintenance or repair of the public work, or for obtaining better access thereto;

(*c.*) Enter with workmen, carts, carriages and horses upon any land, and deposit thereon soil, earth, gravel, trees, bushes, logs, poles, brushwood or other material found on the land required for the public work, or for the purpose of digging up, quarrying and carrying away earth, stones, gravel or other material, and cutting down and carrying away trees, bushes, logs, poles and brushwood therefrom, for the making, constructing, maintaining or repairing the public work;

(*d.*) Make and use all such temporary roads to and from such timber, stones, clay, gravel, sand or gravel pits as are required by him for the convenient passing to and from the works during their construction and repair;

(*e.*) Enter upon any land for the purpose of making proper drains to carry off the water from the public work, or for keeping such drains in repair;

(*f.*) Alter the course of any river, canal, brook, stream or watercourse, and divert or alter, as well temporarily as permanently, the course of any rivers, streams of water, roads, streets or ways, or raise or sink the level of the same, in order to carry them over or under, on the level of, or by the side of, the public work, as he thinks proper; but before discontinuing or altering any public road, he shall substitute another convenient road in lieu thereof; and the land theretofore used for any land, or part of a road, so discontinued, may be transferred by the Minister to and shall thereafter become the property of the owner of the land of which it originally formed a part;

The public easement of passage in a navigable stream is so far in derogation of the rights of riparian owners as to enable the Crown to make any use of the water or bed of the stream which the legislature deems expedient for improving the navigation thereof.—*The Queen* vs. *Fowlds*, 4 Ex. C. R. 1.

(*g*.) Divert or alter the position of any water-pipe, gas-pipe, sewer, drain, or any telegraph, telephone or electric light wire or pole.

Removal and Replacement of Fences, etc., adjoining any Public Work—Obligations of Land Owners.

4. Whenever it is necessary, in the building, maintaining or repairing of the public work, to take down or remove any wall or fence of any owner or occupier of land or premises adjoining the public work, or to construct any back ditches or drains for carrying off water, such wall or fence shall be replaced as soon as the necessity which caused its taking down or removal has ceased; and after the same has been so replaced, or when such drain or back ditch is completed, the owner or occupier of such land or premises shall maintain such walls or fences, drains or back ditches, to the same extent as such owner or occupier might be by law required to do if such walls or fences had never been so taken down or removed, or such drains or back ditches had always existed.

Power to make Sidings, etc., to land where Materials are taken—And for Maintaining the Railway.

5. Whenever any gravel, stone, earth, sand or water is taken as aforesaid, at a distance from the public work, the Minister may lay down the necessary sidings, water pipes or conduits, or tracks over or through any land intervening between the public work and the land on which such material or water is found, whatever the distance is; and all the provisions of this Act, except such as relate to the filing of plans and descriptions, shall apply and may be used and exercised to obtain the right of way from the public work to the land on which such materials are situate; and such right may be acquired for a term of years, or permanently, as the Minister thinks proper; and the powers in this section contained may, at all times, be exercised and used in all respects, after the public work is constructed, for the purpose of repairing and maintaining the same.

1. *Railway siding—Damages.*—The construction of a railway siding along the sidewalk contiguous to lands whereby access to such lands is interfered with, and the frontage of the property destroyed for the uses for which it is held (in this case for sale in building lots), is such an injury thereto as will entitle the owner to compensation. *The Queen, v. Barry*, 2 Ex. C. R. 333.

When whole lot can be more advantageously purchased than a part.

6. Whenever for the purpose of procuring sufficient lands for railway stations or gravel pits, or for constructing, maintain-

ing and using the public work, any land may be taken under the provisions of this Act, and by purchasing the whole of any lot or parcel of land, of which any part may be taken under the said provisions, the Minister can obtain the same at a more reasonable price, or to greater advantage than by purchasing such part only as aforesaid, he may purchase, hold, use or enjoy the whole of such lot or parcel, and also the right of way thereto, if the same is separated from the public work, and may sell and convey the same, or any part thereof, from time to time, as he deems expedient; but the compulsory provisions of this Act shall not apply to the taking of any portion of such lot or parcel which is not, in the opinion of the Minister, necessary for the purposes aforesaid.

Who may be employed to make surveys of land required—Boundaries—Effect of survey—Witnesses—Proviso: formalities not obligatory.

7. The Minister may employ any person duly licensed or empowered to act as a surveyor for any Province in Canada, or any engineer, to make any survey, or establish any boundary and furnish the plans and descriptions of any property acquired or to be acquired by Her Majesty for the public work; and such surveys, boundaries, plans and descriptions shall have the same effect as if the operations pertaining thereto or connected therewith had been performed by a land surveyor duly licensed and sworn in and for the Province in which the property is situate; and the boundaries of such properties may be permanently established by means of proper stone or iron monuments, planted by the engineer or surveyor so employed by the Minister, and shall be of the same effect, to all intents and purposes, as if such boundaries had been drawn and such monuments planted by a land surveyor duly licensed and sworn for the Province in which the property is situate; and such boundaries shall be held to be the true and unalterable boundaries of such property, provided they are so established and such monuments of iron or stone are planted, after due notice thereof has been given in writing to the proprietors of the land thereby affected, and that a *procès-verbal* or written description of such boundaries is approved and signed, in the presence of two witnesses, by such engineer or surveyor, on behalf of the Minister, and by the other person concerned; or that in case of the refusal of any person to approve or to sign the same, such refusal is recorded in such *procès-verbal* or description; and provided such boundary marks or monuments are planted in the presence of at least one witness, who shall sign the said *procès-verbal* or description; and provided also, that it shall not be incumbent on the Minister or those acting for him to have the boundaries established with the formalities in this section mentioned, but the same may be resorted to whenever he deems it necessary so to do.

THE EXPROPRIATION OF LANDS.

Proceedings for taking possession of lands—Deposit of plan and description.

8. Land taken for the use of Her Majesty shall be laid off by metes and bounds; and when no proper deed or conveyance thereof to Her Majesty is made and executed by the person having the power to make such deed or conveyance, or when a person interested in such land is incapable of making such deed or conveyance, or when, for any other reason, the Minister deems it advisable so to do, a plan and description of such land signed by the Minister, the deputy of the Minister or the secretary of the department, or by the superintendent of the public work, or by an engineer of the department, or by a land surveyor duly licensed and sworn in and for the Province in which the land is situate, shall be deposited of record in the office of the registrar of deeds for the county or registration division in which the land is situate, and such land, by such deposit, shall thereupon become and remain vested in Her Majesty.

1. *Assignment of rights in land expropriated previously acquired by lease, conveyance.*—An agreement by a proprietor to sell land to the Crown for a public work, followed by immediate possession and, within a year, by a deed of surrender, is sufficient under *The Expropriation Act*, s. 6 (R. S. C. c. 39) to vest the title to such land in the Crown, and to defeat a conveyance thereof made subsequent to such agreement and possession, but prior to such surrender.—*The Queen, v. McCurdy*, 2 Ex. C. R. 311.

2. *Expropriation—Metes and bounds.*—Under 31 Vict. (P. E. I.) ch. 4, the commissioners who had charge of the construction of the Prince Edward Island Railway, were, among other things, required to lay off by metes and bounds the lands expropriated for the railway purposes before recording a description of the same in the office of the Registrar of Deeds. Having failed to do so it was *held* that they had not complied with the statute and that the Crown had not acquired title to the land. *The Queen, v. Sigsworth*, 2 Ex. C. R. 191.

Correction allowed.

9. In case of any omission, misstatement or erroneous description in such plan or description, a corrected plan and description may be deposited with like effect.

Plan of land in possession of H. M. may be deposited at any time.

10. A plan and description of any land at any time in the occupation or possession of Her Majesty and used for the purposes of any public work may be deposited at any time, in like manner and with like effect as herein provided, saving always the lawful claims to compensation of any person interested therein.

Deposit deemed to be by authority of the Minister.

11. In all cases, when any such plan and description, purporting to be signed by the deputy of the Minister, or by the secretary of the department or by the superintendent of the public work, or by an engineer of the department, or by a land surveyor duly licensed as aforesaid, is deposited of record as aforesaid, the same shall be deemed and taken to have been deposited by the direction and authority of the Minister, and as indicating that in his judgment the land therein described is necessary for the purposes of the public work; and the said plan and description shall not be called in question except by the Minister or by some person acting for him or for the Crown.

Effect of certified copy.

12. A copy of any such plan and description, certified by the registrar of deeds, or his deputy, to be a true copy thereof, shall, without proof of the official character or hand-writing of such registrar or deputy, be deemed and taken in all courts as *primâ facie* evidence of the original, and of the depositing thereof.

Notwithstanding decease of certifying officer.

13. A copy of any such plan and description, certified by the registrar of deeds, or by his deputy, as in the next preceding section mentioned, shall be *primâ facie* evidence of the original and of the depositing thereof, although such registrar or deputy, at the time the same is so offered in evidence, is dead, or has resigned or has been removed from office.

When Provincial Crown lands are taken.

14. If the land taken is Crown land, under the control of the Government of the Province in which such land is situate, a plan of such land shall also be deposited in the Crown Land Department of the Province.

AGREEMENTS AND CONVEYANCES.

Contracts on behalf of persons legally incapable to contract.

15. Any tenant in tail or for life, *grevé de substitution*, seigneur, guardian, tutor, curator, executor, administrator, master or person, not only for and on behalf of himself, his heirs, successors and assigns, but also for and on behalf of those whom he represents, whether infants, issue unborn, lunatics, idiots, *femes covert*, or other persons, seized, possessed or interested in any land or other property, may contract and agree with the Minister for the sale of the whole or any part thereof, and may convey the same to the Crown; and may also contract and agree with the

Minister as to the amount of compensation to be paid for any such land or property, or for damages occasioned thereto, by the construction of any public work, and give acquittance therefor.

Appointment of legal representative.

16. In any case in which there is no guardian or other person to represent any person under any disability, the Exchequer Court may, after due notice to the persons interested, appoint a guardian or person to represent for the purposes hereof such persons so under such disability, with authority to give such acquittance.

On an application to appoint a guardian under the provisions of sec. 16 of *The Expropriation Act*, it is necessary to show first whether any guardian has not already been appointed to the infant in question. *The Queen v. Wood*, January 23rd, 1893.

Disposal of Compensation money.

17. The court in making any order in the two sections next preceding mentioned shall give such directions as to the disposal, application or investment of such compensation money as it deems necessary to secure the interests of all persons interested therein.

Where in a case of expropriation all the claimants but one were of age and those of age had agreed to accept the amount of compensation tendered by the Crown, the court in view of such infancy of one of the claimants directed that there should be a reference to take evidence for the purpose of establishing whether the amount so tendered was a fair and reasonable compensation for the land taken; and further when the amount of compensation had been so ascertained the moneys coming to the said infant were ordered to remain in the hands of the Crown, and bear interest at the rate of four per cent. from the date of the judgment until the infant had become of age, when the said moneys were to be paid over to him. *Porter v. The Queen*, October 4th, 1889. The same principle was recognized in *The Queen v. Wood et al.*, March 13th, 1893.

Contracts under this Act valid.

18. Any contract or agreement made hereunder, and any conveyance or other instrument made or given in pursuance of such contract or agreement shall be good and valid to all intents and purposes whatsoever.

Effect of contract made before deposit of plan.

19 Every such contract or agreement made before the deposit of plans and description, and before the setting out and ascertaining of the land required for the public work, shall be binding at the price agreed upon for the same land, if it is afterwards so set out and ascertained within one year from the date of the contract or agreement, and although such land has, in the meantime, become the property of a third person.

Agreement to accept a certain sum as compensation—Specific performance.—A and B entered into a written agreement to sell and convey to the Crown, by a good and sufficient deed, a certain quantity of land, required for the purposes of the Cape Breton Railway, for the sum of $1,250. At the date of such agreement the centre line of the railway had been staked off through the property of A and B and they were fully aware of the location of the right of way and the quantity of land to be taken from them for such purposes. Thereafter, and within one year from the date of such agreement, the land in dispute was set out and ascertained, and a plan and description thereof duly deposited of record, in pursuance of the provisions of R. S. C. c. 39. Upon A and B refusing to carry out this agreement on the ground that the damages were greater than they anticipated, and the matter being brought into court on the information of the Attorney-General, the court assessed the damages at the sum so agreed upon. *Quære*:—Is the Crown in such a case entitled to specific performance? *The Queen v. McKenzie*, 2 Ex. C. R. 198.

Registration not necessary.

20. No surrender, conveyance, agreement or award under this Act shall require registration or enrolment to preserve the rights of Her Majesty under it, but the same may be registered in the registry office of deeds for the place where the land lies, if the Minister deems it advisable.

WARRANT FOR POSSESSION.

Warrant for possession, How issued and executed—Return to be made to Exchequer Court.

21. If any resistance or opposition is made by any person to the Minister, or any person acting for him, entering upon and taking possession of any lands, the judge of the Exchequer Court, or any judge of any superior court, may, on proof of the execution of a conveyance of such lands to Her Majesty, or agreement therefor, or of the depositing in the office of the registrar of deeds of a plan and description thereof as aforesaid, and after notice to show cause given in such manner as he prescribes, issue his warrant to the sheriff of the district or county within which such lands are situate directing him to put down such resistance or opposition, and to put the Minister, or some person acting for him, in possession thereof; and the sheriff shall take with him sufficient assistance for such purpose, and shall put down such resistance and opposition, and shall put the Minister, or such person acting for him, in possession thereof; and shall forthwith make return to the Exchequer Court of such warrant, and of the manner in which he executed the same.

Compensation money to stand in lieu of land.

22. The compensation money agreed upon or adjudged for any land or property acquired or taken for or injuriously affected by the construction of any public work shall stand in the stead of such land or property; and any claim to or incumbrance upon

such land or property shall, as respects Her Majesty, be converted into a claim to such compensation money or to a proportionate amount thereof, and shall be void as respects any land or property so acquired or taken, which shall, by the fact of the taking possession thereof, or the filing of the plan and description, as the case may be, become and be absolutely vested in Her Majesty.

1. *Injurious affection.*—For the measure of damages in cases where lands are not taken, but injuriously affected only, see *Barry v. The Queen*, 2 Ex. C.R. 333. *Buccleuch v. The Metropolitan Board of Works*, L.R. 5, H. L. 418 (1871). In re *Wadham*, L. R. 14, Q. B. D. 747, (1884); and *Parkdale v. West*, 12 App. Cas. 616, (1887).

2. *Similarity of English and Canadian laws in expropriation matters.*—In so far as "*The Government Railways Act*, 1881," re-enacts the provisions of the *Lands Clauses Consolidation Act* (8-9 Vict. (U.K.) ch. 18), and the *Railways Clauses Consolidation Act* (8-9 Vict. (U.K.) ch. 20), where the latter statutes have been authoritatively construed by a court of appeal in England, such construction should be adopted by the Courts in Canada. *Trimble v. Hill*, 5 App. Cas. 342; and *City Bank v. Barrow*, 5 App. Cas. 664, referred to. *Paradis v. The Queen*, 1 Ex. C. R. 191.

3. *Similarity of English and Canadian laws in expropriation matters.*—The words "injury done" in 31 Vict., ch. 12, sec. 40 is commensurate with, and has the same intendment as the words "injuriously affected" in 8-9 Vict., ch. 18, sec. 68 (Imperial Lands Clauses Consolidation Act), and in so far as the similarity extends, cases decided under the Imperial Act may be cited with authority in construing the Canadian statute. *McPherson v. The Queen*, 1 Ex. C. R. 53.

4. *Similarity of the laws of England and of the Province of Quebec in expropriation matters.*—Apart from any legislation of the Dominion Parliament, where lands have been expropriated for any purpose, a right to compensation obtains under the law of the Province of Quebec in the same way as under the law of England. *Paradis v. The Queen*, 1 Ex. C. R. 191.

5. *Injury to trade and business.*—Where lands are injuriously affected but no part thereof expropriated, damages to a man's trade or business, or any damages not arising out of injury to the land itself, are not grounds of compensation, but where lands have been taken, compensation should be assessed for all direct and immediate damages arising from the expropriation, as well as from the construction and maintenance of the works. *Jubb v. The Hull Dock Co.*, 9 Q. B. 443; and *Duke of Buccleuch v. The Metropolitan Board of Works*, L. R. 5 Ex. 221, and L. R. 5 H. L. 418, referred to. *Ibid.* See post No. 7.

6. *Municipal assessment roll.*—The valuation of a property appearing upon the municipal assessment roll does not constitute a test of the actual value upon which compensation should be based, where such valuation is made arbitrarily and without consideration of the trade carried on upon the property, or the profits derivable therefrom. *Ibid.*

7. *Loss of business.*—Claims in expropriation matters must be only for direct and consequent damages to the property and not to the person or to the business of the claimant. *McPherson v. The Queen*, 1 Ex. C. R. 53, (1882).

8. *Gravel pit.*—Where lands expropriated for the purpose of a railway gravel pit were assessed in respect of their agricultural value, it was held that such basis of valuation was erroneous and that the assessment should be made in respect of the value as a sand and gravel pit.—*Semble* further

that when lands taken possess capabilities rendering them available for more than one purpose, compensation for such taking should be assessed in respect of that purpose which gives the lands their highest value. *Burton v. The Queen* 1 Ex. C. R. 87.

9. *Prospective capabilities.*—In assessing compensation in respect of damage to property arising from the construction, or connected with the execution, of any public work under the provisions of 31 Vict. ch. 12, sec. 34, the prospective capabilities, of such property, must be taken into consideration, as they may form an important element in determining its real value. *Lefebvre v. The Queen*, 1 Ex. C. R. 121.

10. *Loss of profits.*—In assessing damages for injury occasioned to a property by the construction of a railway, the loss of profits since the commencement of the injury, as well as the permanent decrease in the value of property, must be taken into consideration *Pontiot v. The Queen*, 1 Ex. C. R. 313.

11. *Gravel pit.*—Where land is taken by a railway company for the purpose of using the gravel thereon as ballast, the owner is only entitled to compensation for the land so taken as farm land, where there is no market for the gravel. *Vezina v. The Queen*, 17 Can. S. C. R. 1.

12. *Nature of title—Public harbours.*—S.'s title to a water-lot at Levis, in the harbour of Quebec, was based on a grant from the Lieutenant-Governor of Quebec prior to Confederation. The grant contained, *inter alia*, a provision that, upon giving the grantee twelve months' notice and paying him a reasonable sum as indemnity for improvements, the Crown might resume possession of the said water-lot for the purpose of public improvement. *Held* that the property being situated in a public harbour, this power of resuming possession for the purpose of public improvement, would be exercisible by the Crown as represented by the Government of Canada. *Holman v. Green*, 6 Can. S. C. R. 707 referred to. And further that inasmuch as the Crown had not exercised this power, but had proceeded under the expropriation clauses of *The Government Railways Act*, S. was entitled to recover the fair value of the lot at the date of expropriation. That value, however, should be determined with reference to the nature of the title. *Samson v. The Queen*, 2 Ex. C. R. 30.

13. *Expropriation, riparian rights, damages.*—A. and B. who were prosecuting a milling business on certain waters forming part of the Trent Valley Canal, asserted a claim against the Crown for a quantity of land taken for the improvement of the navigation of such waters, and also claimed a large sum for damages alleged to have been sustained by them (1) as riparian owners by reason of the taking of the land on both sides of a head-race preventing any future enlargement of the width of such head-race, and (2) from the fact that they would not be able in the future to use to the full extent all the power which the mill-pond contained because they could not cut race-ways from the pond into the river through the expropriated part. And it was held that while A. and B. were entitled to compensation for the quantity of land taken by the Crown they could not recover for any injury to the remaining land arising from the utilization of the waters of the stream for the purpose of improving navigation. *The Queen v. Fowlds*, 4 Ex. C. R. 1.

14. *Value of lands for building purposes.*—When lands possess a certain value for building purposes at the time of expropriation, but that value cannot be ascertained from an actual sale of any lot or part thereof, the sales of similar and similarly situated properties constitute the best test of such value. *Fuleoner v. The Queen*, 2 Ex. C. R. 82.

15. *Compensation, unfinished wharf—Builder's profit—Basis of value.*

—Where a wharf in course of construction, and materials to be used in completing it, had been taken by the Crown, the court allowed the claimants a sum representing the value of the wharf as it stood, together with that of the materials; and to this amount added a reasonable sum for the superintendence of the work by the builder, who was one of the claimants, for the use of money advanced, and for the risks incurred by him during the construction thereof, in other words a sum to cover a fair profit to the builder on the work so far completed. *Samson v. The Queen*, 2 Ex. C.R. 94.

16. *Compensation money, transfer of land after expropriation.*—Under section 11 of *The Expropriation Act*, (R.S.C. ch 39,) the compensation money for any land acquired or taken for a public work stands in the stead of such land, and any claim or incumbrance upon such land is converted into a claim of compensation, and such claim once created continues to exist as something distinct from the land, and is not affected by any subsequent transfer or surrender of such land. *Partridge v. The Great Western Railway Company*, 8 U. C. C. P. 97, and *Dixon v. Baltimore and Potomac Railroad Company*, 1 Mackey, 78, referred to. *The Queen v. McCurdy*, 2 Ex. C.R. 311.

17. *Lands injuriously affected.*—Where lands are injuriously affected, no part thereof being taken, the owners are not entitled to compensation under *The Government Railways Act*, 1881, unless the injury (1) is occasioned by an act made lawful by the statutory powers exercised, (2) is such an injury as would have sustained an action but for such statutory powers, and (3) is an injury to lands or some right or interest therein, and not a personal injury or an injury to trade. *The Queen v. Barry*, 2 Ex. C. R. 333.

18. *Damages from construction and user of public works.—Quære:*—Whether the rule that compensation in cases of injurious affection only must be confined to such damages as arise from the construction of authorized works, and must not be extended to those resulting from the use of such works, is applicable to cases arising under *The Government Railways Act*, 1881? *Ibid.*

19. *Overhead crossing—Obstruction of access—Damages.*—In the construction of a Government railway, the Crown erected a bridge or overhead crossing on a portion of the highway in such a manner as to obstruct access from such highway to M.'s property, which he had theretofore enjoyed; and the court *held* that M. was entitled to compensation under *The Government Railways Act* and *The Expropriation Act*. *Beckett v. The Midland Railway Company*, L.R. 3 C.P. 82 referred to. *The Queen v. Malcolm*, 2 Ex. C.R 357.

20. *Expropriation—Description of premises.*—In an award for land expropriated for railway purposes where there is an adequate and sufficient description, with convenient certainty of the land intended to be valued, and of the land actually valued, such award cannot afterwards be set aside on the ground that there is a variation between the description of the land in the notice of expropriation and in the award. *Bigaouette v. The North Shore Railway Company*, 17 Can. S.C.R. 363.

Payment when price does not exceed $100.

23. If the compensation money agreed for or adjudged does not exceed one hundred dollars, it may, in any Province, be paid to the person who, under this Act, can lawfully convey the land or property or agree for the compensation to be made in the case, saving always the rights of any other person to such compensation money as against the person receiving the same.

Particulars of estate or interest in property to be declared upon demand.

24. Every person who has any estate or interest in any land or property acquired or taken for, or injuriously affected by the construction of any public work, or who represents or is the husband of any such person, shall upon demand made therefor by or on behalf of the Minister furnish to the Minister a true statement showing the particulars of such estate and interest and of every charge, lien or incumbrance to which the same is subject, and of the claim made by such person in respect of such estate or interest.

See annotation to section 31 of *The Exchequer Court Act ante* p. 94.

Information by Attorney-General shewing—Date of acquisition, &c.—Persons interested—Amount of tender—Other facts.

25. In any case in which land or property is acquired or taken for or injuriously affected by the construction of any public work, the Attorney-General of Canada may cause to be exhibited in the Exchequer Court an information in which shall be set forth:—

(*a.*) The date at which and the manner in which such land or property was so acquired, taken or injuriously affected;

(*b.*) The persons who, at such date, had any estate or interest in such land or property and the particulars of such estate or interest and of any charge, lien or incumbrance to which the same was subject, so far as the same can be ascertained;

(*c.*) The sums of money which the Crown is ready to pay to such persons respectively, in respect of any such estate, interest, charge, lien, or incumbrance;

(*d.*) Any other facts material to the consideration and determination of the questions involved in such proceedings.

The following forms of Information and Statement in Defence in expropriation proceedings may be used, viz:—

INFORMATION.

In the Exchequer Court of Canada.

Between

The Queen on the Information of the Attorney-General of Canada,

Plaintiff;

And

A. B.

Defendant.

Filed on the day of 189.

To the Honourable the Judge of the Exchequer Court of Canada,—

The Information of the Right Honourable Sir John S. D. Thompson, Her Majesty's Attorney-General for the Dominion of Canada on behalf of Her Majesty,

Sheweth as follows :—

1. By the Act of the Parliament of Canada, 52 Vict., ch. 13, sec. 3, passed in the year 1889, it is enacted, *inter alia*, that the Minister, meaning thereby the head of the department of the Government of Canada, charged with the construction and maintenance of the public work, within the meaning of the said chapter, may by himself, his engineers, superintendents, agents, workmen and servants enter upon and take possession of any land, real estate, property, streams, waters and watercourses, the appropriation of which in the judgment of the said Minister is necessary for the use, construction, maintenance or repair of any public work within the meaning of the said Act or for obtaining better access thereto.

2. The Minister of Militia and Defence for the Dominion of Canada, being the head of the department of the Government of Canada, charged with the construction and maintenance of a Drill Hall to be erected in the said City of Halifax as a public work of Canada within the meaning of the said Act, has by himself, his engineers, agents, workmen and servants entered upon and taken possession of certain lands and real property hereinafter mentioned, the same having been in the judgment of the said Minister necessary for the use, construction, maintenance and repair of the said Drill Hall to be erected thereon and for obtaining access thereto, and the said lands and real property have been taken for the use of Her Majesty the Queen, and have been laid off by metes and bounds and a plan and description of the same, signed by the deputy of the said Minister of Militia and Defence were deposited of record on the 13th day of March, 1894, in the office of the Registrar of Deeds for the County of Halifax, in which County the said lands and real property are situate and the same thereby became and now are vested in Her Majesty the Queen.

3. The said lands and real property are described as follows :— (*Here insert description of land.*)

4. The said lands and real property were acquired by Her Majesty the Queen in the manner aforesaid and the right, title and interest of the defendant in the same were acquired by Her Majesty the Queen on the 13th day of March, 1894, by the filing of the plan and description as set forth in the second paragraph of this information.

5. The defendant claims to have been the owner in fee simple of the said lands and real property subject, however, to a mortgage made on the 27th day of October, 1885, by C. D. and wife, the predecessors in title of the said defendant to E. F. and G. H., trustees of I.F., to secure the sum of $600 at the time of filing the said plan and description and the said defendant claims that he has sustained loss and damage in respect of his estate and title in the said lands and real property by reason of the said entry and taking of said lands and real property and by reason of the erection thereon of the Drill Hall above mentioned, and by reason of other lands of said defendant being injuriously affected by said expropriation.

6. Her Majesty the Queen is willing to pay to the defendant the sum of $1,800.00 in full satisfaction of his estate, right, title and interest, free from encumbrance in the said land and real property and in full satisfaction and discharge of all claims of the defendant in respect of damage or loss, if any, that may be occasioned to him by reason of the said expropriation and the location and erection of said Drill Hall on said lands

and real property and by reason of other lands of said defendant being injuriously affected by said expropriation.

7. Her Majesty the Queen is not aware of any other facts material to the consideration and determination of the questions involved in the matter aforesaid.

8. The Attorney-General on behalf of Her Majesty claims as follows :—

(*a*). That it may be declared that the above described lands and real property are vested in Her Majesty the Queen.

(*b*). That it may be declared that the said sum of $1,800.00 is sufficient and just compensation to the defendant for and in respect of the above described lands and real estate so taken as aforesaid, and for said claim for alleged loss and damage mentioned in the fifth paragraph of this information.

(*c*). That it may be declared that the amount due on the mortgage mentioned in the fifth paragraph of this information be paid out of the compensation awarded herein to the defendant.

(*d*). Such further and other relief as to this Honourable Court shall seem meet.

(Sgd.)

Y. Z.
Attorney-General for the Dominion of Canada.

L. M.
Solicitor for the Attorney-General of Canada.

(*Address*)

Note.—This Information is filed by Sir John S. D. Thompson, Her Majesty's Attorney-General on behalf of Her Majesty.

Statement in defence.

(*Heading as above.*)

The defendant in answer to the information by the Honourable Sir John S. D. Thompson, Attorney-General for the Dominion of Canada filed herein, says as follows :—

1. He admits the statements in paragraphs 1, 2, 3, 4 and 5.

2. He says that the mortgage in part set out in paragraph 5 is overdue and under the control of the defendant.

3. The defendant says that he has for a long time owned and possessed the lands described in the information and that they were valuable tenement properties, and the said defendant obtained every year a large sum as rentals for said premises, and by reason of the said expropriation and ouster the said defendant lost a valuable source of income and the defendant charges and claims that the said tender is wholly and grossly insufficient and inadequate and that by reason of the said expropriation and ouster he has sustained damage to the amount of $2,500.00.

4. The defendant therefore claims that it may be declared that the said tender of $1,800 is not a sufficient and just compensation to the defendant for and in respect of the land, etc., expropriated, and for his loss and

damage consequent therefrom, and that it may be adjudged and declared that the defendant is entitled to the sum of $2,500 therefor, together with interest and his costs.

Dated at 189

C. D.
Solicitor for defendant.

To the Honourable
The Attorney-General of Canada.

and to E. F., Esq., his Solicitor.

Effect of information—Service, &c.

26. Such information shall be deemed and taken to be the institution of a suit against the persons named therein, and shall conclude with a claim for such a judgment or declaration as in the opinion of the Attorney-General the facts warrant. It shall be served in like manner as other informations, and all proceedings in respect thereof or subsequent thereto shall be regulated by and shall conform as near as may be to the procedure in other cases instituted by information in such court.

See under preceding section for form of information.

Defences thereto.

27. Any person who is mentioned in any such information, or who afterwards is made or becomes a party thereto, may, by his answer, exception or defence, raise any question of fact or law incident to the determination of his rights to such compensation money or any part thereof, or in respect of the sufficiency of such compensation money.

See under section 25 for form of defence.

Effect of proceedings—Claims to be adjudged on by the court.

28. Such proceedings shall, so far as the parties thereto are concerned, bar all claims to the compensation money or any part thereof, including any claim in respect of dower, or of dower not yet open, as well as in respect of all mortgages, hypothecs or incumbrances upon the land or property; and the court shall make such order for the distribution, payment or investment of the compensation money and for the securing of the rights of all persons interested, as to right and justice and according to the provisions of this Act and to law appertain.

See notes to Rule 143.

The particular interest of each party should be found in an expropriation action, and a distinct compensation awarded in respect thereof. *North Staffordshire Ry. Co. v. Landor*, 2 Ex. 235. Hodges *On Railways*, 6th Edn. 175.

Every person having any interest partial or temporary, or permanent, or absolute, is entitled to damages proportioned to the injury to that interest. Sutherland *On Damages*, vol. 3, p. 417. As to tenants in common and mortgagees, see Hodges *On Railways*, 6th Edn., page 185, and cases there cited.

INTEREST.

Rate of interest six per cent.—Proviso.

29. Interest at the rate of six per centum per annum may be allowed on such compensation money from the time when the land or property was acquired, taken or injuriously affected to the date when judgment is given; but no person to whom has been tendered a sum equal to or greater than the amount to which the court finds him entitled shall be allowed any interest on such compensation money for any time subsequent to the date of such tender.

Interest may be refused or diminished in certain cases.

30. If the court is of opinion that the delay in the final determination of any such matter is attributable in whole or in part to any person entitled to such compensation money or any part thereof, or that such person has not upon demand made therefor furnished to the Minister within a reasonable time a true statement of the particulars mentioned in section twenty-five, it may, for the whole or any portion of the time for which he would otherwise be entitled to interest, refuse to allow him interest, or it may allow the same at any rate less than six per centum per annum that to it appears just.

Section 4 of 52 Vict., ch. 38, which has been added to *The Exchequer Court Act*, in 1889, provides that the Crown may pay interest at the rate of four per cent. from the date of judgment until payment. See *supra* pp. 62, 111.

COSTS.

As to costs.

31. The costs of and incident to any proceedings hereunder shall be in the discretion of the Exchequer Court, which may direct that the whole or any part thereof shall be paid by the Crown or by any party to such proceeding.

See Rule 259.

PAYMENT OF COMPENSATION OR COSTS.

Payment of compensation and costs.

32. The Minister of Finance and Receiver General may pay to any person, out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada, any sum to which,

under the judgment of the Exchequer Court, in virtue of the provisions of this Act, he is entitled as compensation money or costs.

See Rule 191.

LANDS VESTED IN HER MAJESTY.

Lands acquired vested in Her Majesty—Shores and beds of Public harbors may be sold, &c—Private rights saved.

33. All lands, streams, water courses and property acquired for any public work shall be vested in Her Majesty and, when not required for the public work, may be sold or disposed of under the authority of the Governor in Council, and all hydraulic powers created by the construction of any public work, or the expenditure of public money thereon shall be vested in Her Majesty, and any portion thereof not required for the public work may be sold or leased under the authority aforesaid; and any portion of the shore or bed of any public harbor vested in Her Majesty, as represented by the Government of Canada, not required for public purposes, may, on the joint recommendation of the Ministers of Public Works and of Marine and Fisheries, be sold or leased under the authority aforesaid; and the proceeds of all such sales and leases shall be accounted for as public money; but no such sale or lease shall prejudice or affect any right or privilege of any riparian owner.

Interference with navigation—Proviso—Certain works are "lawful works."

34. Whenever in any Act of the Parliament of Canada, authority is given by the appropriation of public money or otherwise to construct any bridge, wharf or other public work in any navigable water, such authority includes authority to interfere with the navigation of such water in such manner and to such extent as shall be approved by the Governor in Council, subject always to any provisions of any Act for limiting such interference; and every bridge, wharf or public work heretofore constructed with the public money of Canada in or over navigable water, shall be and be deemed to be a lawful work or structure.

1. *Interference with navigation—Dominion and Provincial rights.*—Whenever by an Act of a Provincial Legislature passed before the Union authority is given to the Crown to permit an interference with the public right of navigation, such authority is exercisible by the Governor-General and not by the Lieutenant-Governor of the Province. *The Queen v. Fisher*, 2 Ex. C. R. 365.

2. *Grant from the Crown—Dominion and Provincial rights.*—A grant from the Crown which derogates from a public right of navigation is to that extent void unless the interference with such navigation is authorized by Act of Parliament. The Provincial Legislatures, since the union of the provinces, cannot authorize such an interference. *Ibid.*

3. *Riparian rights Obstructions to "accès et sortie"—Right of action.*—A riparian proprietor on a navigable river is entitled to damages against a railway company for any obstruction to his rights of *accès et sortie* and such obstruction without parliamentary authority is an actionable wrong. *Pion v. North Shore Railway Co.*, 14 App. Cas. 612, followed. *Bigaouette v. The North Shore Railway Co.*, 17 Can. S. C. R. 363 and *The Queen v. Malcolm*, 2 Ex. C. R. 357.

REPEAL, SAVING AND EXPLANATORY PROVISIONS.

R. S. C., c. 39 and 50-51 Vict., c. 17 repealed.

35. This Act shall be substituted for the Revised Statutes, chapter thirty-nine, respecting the expropriation of lands, which, with the Act fifty and fifty-one Victoria, chapter seventeen, in amendment thereof, is hereby repealed.

Continuance of proceedings had.

36. In any case in which the Minister has given to the registrar of the Exchequer Court the notice provided by the twelfth section of "*The Expropriation Act*" as contained in the said Act fifty and fifty-one Victoria, chapter seventeen, all proceedings may be continued as if this Act had not been passed.

Provision as to cases where no statement of claim has been filed.

37. If in any proceeding under the twelfth and thirteenth sections of "*The Expropriation Act*" as contained in the said Act fifty and fifty-one Victoria, chapter seventeen, no statement of claim was or is filed with the registrar on or before the day named in the notice given by such registrar, the amount of the compensation money mentioned in the Minister's notice shall, unless otherwise ordered, in accordance therewith be declared sufficient compensation for the land or property acquired, taken or injuriously affected; and thereafter any person entitled to such compensation money, or any part thereof, may, on application to the court, supported by satisfactory proof of his right thereto, obtain a judgment of the court as in other cases that he is so entitled.

The Patent Act.

PART OF CHAPTER 61 OF THE REVISED STATUTES OF CANADA.

(*As amended by* 51 *Vict., ch.* 18; 53 *Vict., ch.* 13; 54-55 *Vict., ch.* 33, *and* 55-56 *Vict. ch.* 24.)

By section 37 of R. S. C., ch. 61 (as amended by 53 Vict., ch. 13, and 54-55 Vict., ch. 33) the Exchequer Court is given exclusive original jurisdiction for the forfeiture of patents of invention in cases (1) of failure by the patentee to construct or manufacture the invention patented within two years from the date thereof; (2) and where the patentee, after the expiration of twelve months from the date of the patent, imports or causes to be imported into Canada the invention for which the patent is granted. By section 34 of the same Act the court is further given concurrent original jurisdiction with the provincial courts in proceedings for the impeachment of patents.

A.D. 1886.—An Act respecting Patents of Invention.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short Title.

1. This Act may be cited as "*The Patent Act.*" 35 Vict., ch. 26, s. 53.

INTERPRETATION.

Interpretation—"Minister"—"Commissioner"—"Deputy Commissioner"—"Invention"—"Legal representatives."

2. In this Act, unless the context otherwise requires,—

(*a.*) The expression "The Minister" means the Minister of Agriculture;

(*b.*) The expression "Commissioner" means the Commissioner of Patents, and the expression "Deputy Commissioner" means the Deputy Commissioner of Patents;

(*c.*) The expression "invention" means any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement in any art, machine, manufacture or composition of matter;

(*d.*) The expression "legal representatives" includes heirs, executors, administrators and assigns or other legal representatives.

PATENT OFFICE AND APPOINTMENT OF OFFICERS.

Patent Office constituted.

3. There shall be attached to the Department of Agriculture, as a branch thereof, an office which shall be called the Patent Office; and the Minister of Agriculture for the time being shall be the Commissioner of Patents. 35 Vict., ch. 26, s. 1, *part*.

Duties of the Commissioner.

4. The commissioner shall receive all applications, fees, papers, documents and models for patents, and shall perform and do all acts and things requisite for the granting and issuing of patents of invention; and he shall have the charge and custody of the books, records, papers, models, machines and other things belonging to the Patent office. 35 Vict., ch. 26, s. 1, *part*.

* * * * * * *

IMPEACHMENT AND OTHER LEGAL PROCEEDINGS IN RESPECT OF PATENTS.

Patent to be void in certain cases, or valid only for part —Copies of judgment to be sent to Patent Office.

28. A patent shall be void, if any material allegation in the petition or declaration of the applicant hereinbefore mentioned in respect of such patent is untrue, or if the specifications and drawings contain more or less than is necessary for obtaining the end for which they purport to be made, when such omission or addition is wilfully made for the purpose of misleading; but if it appears to the court that such omission or addition was an involuntary error, and if it is proved that the patentee is entitled to the remainder of his patent *pro tanto*, the court shall render a judgment in accordance with the facts, and shall determine as to costs, and the patent shall be held valid for such part of the invention described, as the patentee is so found entitled to; and two office copies of such judgment shall be furnished to the Patent Office by the patentee, one of which shall be registered and remain of record in the office, and the other of which shall be attached to the patent, and made a part of it by a reference thereto. 35 Vict., ch. 26, s. 27.

Specifications, interpretation of by reference to drawings.—The drawings annexed to a patent may be looked at to explain or illustrate the specifications. *The Queen v. La Force*, 4 Ex. C.R. 14.

Remedy for infringement of patent.

29. Every person who, without the consent in writing of the patentee, makes, constructs or puts in practice any invention for which a patent has been obtained under this Act, or any previous Act, or who procures such invention from any person not author-

ized by the patentee or his legal representatives to make or use it, and who uses it, shall be liable to the patentee or his legal representatives in an action of damages for so doing; and the judgment shall be enforced, and the damages and costs that are adjudged shall be recoverable, in like manner as in other cases in the court in which the action is brought. 35 Vict., ch. 26, s. 23.

Action for infringement of patent.

30. Any action for the infringement of a patent may be brought in any court of record having jurisdiction, to the amount of the damages claimed, in the Province in which the infringement is alleged to have taken place, and which is also that one of the said courts which holds its sittings nearest to the place of residence or of business of the defendant; and such court shall decide the case and determine as to costs. 35 Vict., ch. 26, s. 24, *part.*

1. *Infringement—Want of Novelty.*—When the combination of old elements is a mere aggregation of parts not in themselves patentable, and producing no new result due to the combination itself, there is no invention and consequently such combination cannot form the subject of a patent. *Hunter v. Carrick.* 11 Can. S.C.R. 300.

2. *Combination—Novelty.*—An invention consisting of the combination in a machine of three parts or elements, A, B and C, each of which being old and of which A had been previously combined with B in one machine, and B and C in another machine, but the united action of which in the patented machine producing new and useful results is a patentable invention. *Smith v. Goldie,* 9 Can. S.C.R. 47.

3. *Patent—New combination of known elements.*—A new combination of known elements is an invention and as such is patentable. The person who has devised such new combination has all the rights and privileges of an inventor even if the novelty consists in a trifling mechanical change, provided, in the latter case, some economic or other result is produced some way different from what was obtained before. *Mitchell v. The Hancock Inspirator Co.,* 2 Ex. C.R. 539.

4. *Contractual character of a patent—Liberal interpretation.*—The granting of letters patent to inventors is not the creation of an unjust monopoly, nor the concession of a privilege by mere gratuitous favour, but it is a contract between the state and the discoverer, which, in favor of the latter, ought to receive a liberal interpretation. *Barter v. Smith,* 2 Ex. C. R. 455.

5. *Burden of proof—Duty of patentee as to creating market for patent.*—It is not incumbent upon a patentee to show that he has made active efforts to create a market for his patented invention in Canada. It rests upon those who seek to defeat the patent to show that he neglected or refused to sell the invention for a reasonable price when proper application was made to him therefor. *Ibid.*

6. *Patent—New combination of old materials or devices.*—An invention consisting of a new and useful combination of well known materials or devices which produces a result not theretofore so obtained is a proper subject for a patent. *Toronto Telephone Mfg. Co. v. Bell Telephone Co.,* 2 Ex. C. R. 495.

7. *Patent—Obligation to sell invention.*—Upon application being made to the respondents to purchase a number of their telephones for

private purposes they refused to sell the same, accompanying such refusal by the statement :—"We do not sell telephones, but we rent them." It was held that the respondents had thereby afforded a good ground for forfeiture of their patent.—*Ibid.*

8. *Connivance in importation by patentee.*—Connivance by the patentee in an improper importation is equal to importing or causing to be imported within the meaning of the statute. *Ibid.*

9. *Importation of elements common to several patented inventions belonging to same patentee, but used for one only.*—Where the owner of several patents illegally imports elements common to the composition of all his inventions but uses the same in the construction of one of them only, such importation operates a forfeiture in respect of the particular invention so constructed but does not affect the other patents. *Toronto Telephone Mfg. Co. v. Bell Telephone Co.*, 2 Ex. C. R. 524.

10. *How patentee may satisfy requirements of statute as to manufacture.*—A patentee is within the meaning of the law in regard to his obligation to manufacture, when he has kept himself ready either to furnish the patented article or to sell the right of using, although not one single specimen of the article may have been produced, and he may have avoided his patent by refusal to sell, although his patent is in general use. *Ibid.*

11. *Patent of invention—Novelty—Infringement.*—C. & Co. were assignees of a patent for a check-book used by shop-keepers in making out duplicate accounts of sales. The alleged invention consisted of double leaves, half being bound together and the other half folded in as fly-leaves with a carbonized leaf bound in next the cover and provided with a tape across the end. What was claimed as new in this invention was the device, by means of the tape, for turning over the carbonized leaf without soiling the fingers or causing it to curl up. H. made and sold a similar check-book with a like device but instead of the tape the end of the carbonized leaf, for about half an inch, was left without carbon and the leaf was turned over by means of this margin. In an action by C. & Co. against H. for infringement of their patent, the Supreme Court of Canada, *held*, affirming the decision of the Exchequer Court, that the evidence at the trial showed the device for turning over the black leaf without soiling the fingers to have been used before the patent of C. & Co. was issued and it was therefore not new ; that the only novelty in the said patent was in the use of the tape ; and that using the margin of the paper instead of the tape was not an infringement. *Carter & Co. v. Hamilton*, 23 Can. S.C.R. 172; 3 Ex. C. R. 351.

Injunction may issue—Appeal.

31. In any action for the infringement of a patent, the court, if sitting, or any judge thereof if the court is not sitting, may, on the application of the plaintiff or defendant respectively, make such order for an injunction, restraining the opposite party from further use, manufacture or sale of the subject matter of the patent, and for his punishment in the event of disobedience of such order, or for inspection or account, and respecting the same and the proceedings in the action, as the court or judge sees fit ; but, from such order, an appeal shall lie under the same circumstances, and to the same court, as from other judgments or orders of the court in which the order is made. 35 Vict., ch. 26, s. 24, *part.*

Court may discriminate in certain cases.

32. Whenever the plaintiff, in any such action, fails to sustain his action, because his specification and claim embrace more than that of which he was the first inventor, and it appears that the defendant used or infringed any part of the invention justly and truly specified and claimed as new, the court may discriminate,—and the judgment may be rendered accordingly. 35 Vict., ch. 26, s. 25.

Defence in actions for infringement.

33. The defendant, in any such action, may plead specially as matter of defence, any fact or default which, by this Act, or by law, renders the patent void; and the court shall take cognizance of that special pleading and of the facts connected therewith, and shall decide the case accordingly. 35 Vict., ch. 26, s. 26.

Proceedings for impeachment of patent.

["**34.** Any person who desires to impeach any patent issued under this Act, may obtain a sealed and certified copy of the patent and of the petition, affidavit, specification and drawings thereunto relating, and may have the same filed in the office of the prothonotary or clerk of the Superior Court for Lower Canada in Quebec, or of any of the divisions of the High Court of Justice for Ontario, or of the Supreme Court in Nova Scotia, or of the Supreme Court in New Brunswick, or of the Supreme Court of Judicature in Prince Edward Island, or of the Supreme Court in British Columbia, or of the Court of Queen's Bench in Manitoba, or of the Supreme Court in the North-West Territories, according to the domicile elected by the patentee, as aforesaid, or in the office of the registrar of the Exchequer Court of Canada,—which Courts, respectively, shall adjudicate on the matter and decide as to costs; and if the domicile elected by the patentee is in the District of Keewatin, the Court of Queen's Bench of Manitoba shall have jurisdiction until there is a superior court in such District, after which such superior court shall have jurisdiction."]

As amended by 53 Vict., ch. 13, sec. 1.—The effect of this amendment has been to give the Exchequer Court of Canada concurrent original jurisdiction in proceedings for impeachment of patents.

Scire facias may issue.

2. The patent and documents aforesaid shall then be held as of record in such courts respectively, so that a writ of *scire facias*, under the seal of the court, grounded upon such record, may issue for the repeal of the patent, for cause as aforesaid, if, upon proceedings had upon the writ in accordance with the meaning of this Act, the patent is adjudged to be void. 35 Vict., ch. 26, s. 29; 37 Vict., ch. 44, s. 1; 38 Vict., ch. 14, s. 8; 49 Vict., ch 25, s. 14.

1. *Prior foreign invention unknown to Canadian inventor.*—The fact that prior to the invention of anything by an independent Canadian inventor, to whom a patent therefor is subsequently granted in Canada, a foreign inventor had conceived the same thing but had not used it or in any way disclosed it to the public, is not sufficient under the patent laws of Canada to defeat a Canadian patent. *The Queen v. La Force*, 4 Ex. C.R. 14,

2. *Inventor—Prior patent to person not inventor—Scire facias.*—To be entitled to a patent in Canada, the patentee must be the first inventor in Canada or elsewhere. A prior patent to a person who is not the true inventor is no defence against an action by the true inventor under a patent issued to him subsequently, and does not require to be cancelled or repealed by *scire facias*, whether it is vested in the defendant or in a person not a party to the suit. *Smith v. Goldie*, 9 Can. S.C.R. 47.

Judgment voiding patent to be filed in Patent Office.

35. A certificate of the judgment avoiding any patent shall, at the request of any person filing it to make it of record in the Patent Office, be entered on the margin of the enrolment of the patent in the Patent Office, and the patent shall thereupon be and be held to have been void and of no effect, unless the judgment is reversed on appeal as hereinafter provided. 35 V., c. 26, s. 30.

Appeal.

36. The judgment declaring or refusing to declare any patent void shall be subject to appeal to any court having appellate jurisdiction in other cases decided by the court by which the judgment declaring or refusing to declare such patent void, was rendered. 35 V., c. 26, s. 31.

Conditions of Patent—Manufacture in Canada.

["**37.** Every patent granted under this Act shall be subject, and be expressed to be subject, to the following conditions:—

"(*a.*) That such patent and all the rights and privileges thereby granted shall cease and determine, and that the patent shall be null and void at the end of two years from the date thereof, unless the patentee or his legal representatives, or his assignee, within that period or any authorized extention thereof, commence, and after such commencement, continuously carry on in Canada the construction or manufacture of the invention patented, in such a manner that any person desiring to use it may obtain it, or cause it to be made for him at a reasonable price, at some manufactory or establishment for making or constructing it in Canada;

Importation into Canada.

"(*b.*) That if, after the expiration of twelve months from the granting of a patent, or any authorized extension of such period, the patentee or patentees, or any of them, or his or their representatives, or his or their assignee, for the whole or a part of his or their interest in the patent, imports, or causes to be imported

into Canada, the invention for which the patent is granted, such patent shall be void as to the interest of the person or persons importing or causing to be imported as aforesaid:

Jurisdiction of Exchequer Court in such cases.

"2. Any question which arises as to whether a patent, or any interest therein, has or has not become void, under the provisions of this section, may be adjudicated upon by the Exchequer Court of Canada, which court shall have jurisdiction to decide any such question upon information in the name of the Attorney General of Canada, or at the suit of any person interested:

Jurisdiction of other courts not ousted.

"3. This section shall not be held to take away or affect the jurisdiction which any court other than the Exchequer Court of Canada possesses."]

Terms for manufacture in Canada may be extended.

2. Whenever a patentee has been unable to carry on the construction or manufacture of his invention within the two years hereinbefore mentioned, the commissioner may, at any time not more than three months before the expiration of that term, grant to the patentee an extension of the term of two years on his proving to the satisfaction of the commissioner that he was, for reasons beyond his control, prevented from complying with the above condition:

Term for importation may be extended—Proviso.

3. The commissioner may grant to the patentee, or to his legal representatives or assignee for the whole or any part of the patent, an extension for a further term not exceeding one year, beyond the twelve months limited by this section, during which he may import or cause to be imported into Canada the invention for which the patent is granted, if the patentee or his legal representatives, or assignee for the whole or any part of the patent, show cause, satisfactory to the commissioner, to warrant the granting of such extension; but no extension shall be granted unless application is made to the commissioner at some time within three months before the expiry of the twelve months aforesaid, or of any extension thereof. 35 V., c. 26, s. 8;—38 V., c. 14, s. 2;—45 V., c. 22, s. 1.

As now in force (1895).—The above section as formerly enacted in ch. 61 of *The Revised Statutes of Canada*, has first been amended by 53 Vict. ch. 13 (1890), then by 54-55 Vict. ch. 33 (1891) and finally by 55-56 Vict. ch. 24. sec. 6. (1892).

The result of these amendments has been to transfer to the Exchequer Court of Canada the jurisdiction and powers formerly exercised by the Minister of Agriculture in respect of disputes as to whether a patent has or has not become null and void under the provisions of this section.

JURISPRUDENCE :—

1. *Patents—Articles of Commerce—Importation.*—If an article imported by a patentee and used by him in the construction of his invention is a common commercial article employed for many purposes, and is not specified in the patentee's claim as an essential part of his invention, such importation does no operate a forfeiture of the patent.—*Royal Electric Co. v. Edison Electric Co.*, 2 Ex. C.R. 576.

2.—*Importation of parts.*—A fair test of the patentee's ability to freely import any article required in the construction of his invention is to ascertain if it is open to every person in Canada to manufacture, import, sell and use the same without thereby infringing the patent in question. If the article is thus part of the public domain, the patentee is at liberty either to import it or purchase it in Canada for the purposes of such construction. *Ibid.*

3. *Novelty forming part of combination patented.*—Where the subject of a patent is a combination of elements and one of them is a novelty invented by the patentee, such novelty is in the same position as the other elements with respect to importation by him unless its production or manufacture is covered by the patent in question. *Ibid.*

4. *Penalty in section 37, how to be applied.*—There is no express provision in the statute imposing the penalty of forfeiture for importing into Canada the various parts of the invention in respect of which the patent was granted, much less for importing one of its parts. The words of the statute are "the invention for which the patent is granted," and they ought not to be extended beyond their plain meaning. In administering the statute, the Minister (*a*) can only apply the penalty to the offence which the statute forbids. He cannot apply it to an attempt to evade the statute, and in imposing penalties, Parliament must take its own measures to prevent evasion, and it would be most unsafe to impose, in the case of an evasion, the heavy penalty which the law has levelled at the principal offence, on the theory which may or may not be correct, that Parliament intended by an equal penalty to forbid the doing of that which would be almost or quite an equivalent of the principal offence. *Ibid.*

5. *Patentee's right to impose limitation on sale.*—Where the article patented is of delicate and skilful manufacture, and one from which the patentee can only reap the reward of his labour and expenditure through it being esteemed successful by the public, it is reasonable for him, at a time when public opinion with respect to it is in suspense, to decline to sell his invention unconditionally to those who, by unsuitable use, would fail to derive benefit from it themselves, and would create an impression in the public mind that the invention was a failure. If, upon application made to him for the purchase of his invention, he imposes a limitation in respect of its use, he ought not to be held to have thereby forfeited his patent unless it appear that such limitation was imposed for the purpose of evading compliance with the provisions of the statute which require him to sell the patented invention at a reasonable price. *Ibid.*

6. *Price—Monopoly.*—In relation to the provisions of section 37 of *The Patent Act* touching the price of the patented invention to purchasers, it would appear that the evil the statute was principally intended to prevent is the exaction of exorbitant prices under the monopoly secured by the patent. *Ibid.*

(*a.*) The above holding was made prior to the amendments of sec. 37, as enacted in R.S.C. The judicial powers formerly exercised by the Minister have been transferred to the Exchequer Court.

The Copyright Act.

PART OF CHAPTER 62 OF THE REVISED STATUTES OF CANADA.

(As amended by 52 Vict., ch. 29; 53 Vict., ch. 12, and 54-55 Vict., ch. 34.)

By section 19 of R.S.C., ch. 62 (as amended by 53 Vict., ch. 12 and 54-55 Vict., ch. 34) the Exchequer Court is given jurisdiction to adjudicate upon cases of conflicting claims to copyright.

A.D. 1886. An Act respecting Copyright.

NOTE.—The original Act is chaptered 88 of the Statutes of 1875, although there is another Act passed in the same year also chaptered 88.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title.

1. This Act may be cited as "*The Copyright Act.*" 38 Vict., ch. 88, s. 31.

INTERPRETATION.

Interpretation—"Minister"—"Department"—"Legal representatives."

2. In this Act, unless the context otherwise requires,—

(*a.*) The expression "the Minister" means the Minister of Agriculture;

(*b.*) The expression "the Department" means the Department of Agriculture;

(*c.*) The expression "legal representatives" includes heirs, executors, administrators and assigns, or other legal representatives.

REGISTERS OF COPYRIGHTS.

Minister of Agriculture to keep registers of copyrights.

3. The Minister of Agriculture shall cause to be kept, at the Department of Agriculture, books to be called the "Registers of copyrights," in which proprietors of literary, scientific and artistic works of composition, may have the same registered in accordance with the provisions of this Act. 38 Vict., ch. 88, s. 1.

CONFLICTING CLAIMS TO COPYRIGHT.

Cases of conflicting claims in respect of copyright to be settled before a competent court—Action on decision.

19. In case of any person making application to register as his own, the copyright of a literary, scientific or artistic work already registered in the name of another person, or in case of simultaneous conflicting applications, or of an application made by any person other than the person entered as proprietor of a registered copyright, to cancel the said copyright, the person so applying shall be notified by the Minister that the question is one for the decision of a court of competent jurisdiction, and no further proceedings shall be had or taken by the Minister concerning the application until a judgment is produced maintaining, cancelling or otherwise deciding the matter;

2. Such registration, cancellation or adjustment of the said right shall then be made by the Minister in accordance with such decision. 38 Vict., ch. 88, s. 19.

Jurisdiction of Exchequer Court.

["3. The Exchequer Court of Canada shall be a competent court within the meaning of this Act, and shall have jurisdiction to adjudicate upon any question arising under this section, upon information in the name of the Attorney-General of Canada, or at the suit of any person interested."]

As amended by 53 Vict., ch. 12, and 54-55 Vict., ch. 34.

The third paragraph of this section has been added by 53 Vict., ch. 12 (1890) and subsequently amended by 54-55 Vict., ch. 34 (1891) by substituting the words "or at the suit of any person interested" for the words "and at the relation of any party interested" appearing in the Act of 53 Vict., ch. 12.

INFRINGEMENT OF COPYRIGHT.

Liability of persons printing Mss. without owner's consent.

20. Every person who, without the consent of the author or lawful proprietor thereof first obtained, prints or publishes, or causes to be printed or published, any manuscript not previously printed in Canada or elsewhere, shall be liable to the author or proprietor for all damages occasioned by such publication, and the same shall be recoverable in any court of competent jurisdiction. 38 Vict., ch. 88, s. 3.

Certified copies and extracts—their effect.

26. All copies or extracts certified, from the department, shall be received in evidence, without further proof and without production of the originals. 38 Vict., ch. 88, s. 21.

By sections 30, 31, 32 and 33 penalties are imposed for acts done in violation of this statute and provisions made for the recovery of these penalties before a court of competent jurisdiction. The Exchequer Court has jurisdiction to hear and determine such class of cases.

Limitation of actions.

34. No action or prosecution for the recovery of any penalty under this Act, shall be commenced more than two years after the cause of action arises. 38 Vict., ch. 88, s. 27.

The Trade-Mark and Design Act.

PART OF CHAPTER 63 OF THE REVISED STATUTES OF CANADA.

(As amended by 53 Vict., ch. 14, and 54-55 Vict. ch. 35.)

By section 11 of R.S.C. ch. 62 (as amended by 54-55 Vict., ch. 35) the Exchequer Court is invested with the jurisdiction for deciding matters of dispute touching the registration of a trade-mark, on the reference to the court by the Minister of Agriculture; by sec. 12 of the same Act, the court is further endowed with jurisdiction in matters respecting the entries in the register of trade-marks, the rectification of a register and the alteration of a trade-mark. By sec. 33 the court is given jurisdiction for making, expunging or varying any entry in the register of industrial designs and for adding to or altering any industrial design.

A.D. 1886. An Act respecting Trade-Marks and Industrial Designs.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short Title.

1. This Act may be cited as "*The Trade-Mark and Design Act.*" 42 Vict., ch. 22, s. 40.

APPLICATION OF ACT.

Application of Act.

2. Sections three to twenty-one of this Act, both inclusive, apply only to trade-marks, and sections twenty-two to thirty-eight, both inclusive, apply only to industrial designs. 42 Vict., ch. 22, s. 37.

TRADE-MARKS.

What shall be deemed to be trade-marks—Exclusive right—As to timber or lumber.

3. All marks, names, brands, labels, packages or other business devices, which are adopted for use by any person in his trade, business, occupation or calling, for the purpose of distinguishing any manufacture, product or article of any description manufactured, produced, compounded, packed or offered for sale by him—applied in any manner whatever either to such manufacture, product or article, or to any package, parcel, case, box or other vessel or receptacle of any description whatsoever containing the same, shall, for the purposes of this Act, be considered and known as trade-marks, and may be registered for the exclusive use of the

person registering the same in the manner herein provided ; and thereafter such person shall have the exclusive right to use the same to designate articles manufactured or sold by him :

2. Timber or lumber of any kind upon which labor has been expended by any person in his trade, business, occupation or calling, shall, for the purposes of this Act, be deemed a manufacture, product or article. 42 Vict., ch. 22, s. 8.

1. *Trade-Mark—Essential elements of*.—The essential elements of a legal trade-mark are (1) the universality of right to its use, *i.e.*, the right to use it the world over as a representation of, or substitute for, the owner's signature ; (2) exclusiveness of the right to use it. *The J. P. Bush Mfg. Co. v. Hanson*. 2 Ex. C.R. 557.

2. *Trade-Mark—First use*.—First use is the prime essential of a trade-mark, and a transferee must, at his peril, be sure of his title. *Graff v. The Snow Drift Baking Powder Co.*, 2 Ex. C.R. 508.

Classification—General trade-mark—Specific trade-mark.

4. A trade-mark may be general or specific, according to the use to which it is applied or intended to be applied by the proprietor thereof :

(*a.*) A general trade-mark is one used in connection with the sale of various articles in which the proprietor deals in his trade, business, occupation or calling generally :

(*b.*) A specific trade-mark is one used in connection with the sale of a class of merchandise of a particular description. 42 Vict., ch. 22, s. 9.

Register to be kept.

5. A register of trade-marks shall be kept at the Department of Agriculture, in which any proprietor of a trade-mark may have the same registered, on complying with the provisions of this Act. 42 Vict., c 22, s. 1.

Minister may make rules and adopt forms.

6. The Minister of Agriculture may, from time to time, subject to the approval of the Governor in Council, make rules and regulations and adopt forms for the purposes of this Act, as respects trade-marks ; and such rules, regulations and forms circulated in print for the use of the public, shall be deemed to be correct for the purposes of this Act ; and all documents executed according to the same and accepted by the minister, shall be deemed to be valid so far as relates to official proceedings under this Act. 42 Vict., c. 22, s. 2.

Seal and its use.

7. The Minister of Agriculture may cause a seal to be made for the purposes of this Act, and may cause to be sealed therewith trade-marks and other instruments, and copies of such trade-marks and other instruments, proceeding from his office in relation to trade-marks. 42 Vict., c. 22, s. 3.

How registration may be effected.

8. The proprietor of a trade-mark may have it registered on forwarding to the Minister of Agriculture, together with the fee hereinafter mentioned, a drawing and description in duplicate of such trade-mark, and a declaration that the same was not in use to his knowledge by any other person than himself at the time of his adoption thereof. 42 Vict., c. 22, s. 6.

Nature of trade-mark to be specified.

9. Every proprietor of a trade-mark who applies for its registration shall state in his application whether the said trade-mark is intended to be used as a general trade-mark or as a specific trade-mark. 42 Vict., c. 22, s. 11.

When Minister may refuse to register a trade-mark.

["11. The Minister of Agriculture may refuse to register any trade-mark in the following cases:—

"(*a.*) If he is not satisfied that the applicant is undoubtedly entitled to the exclusive use of such trade-mark;

"(*b.*) If the trade-mark proposed for registration is identical with or resembles a trade mark already registered;

"(*c.*) If it appears that the trade-mark is calculated to deceive or mislead the public;

"(*d*) If the trade-mark contains any immorality or scandalous figure;

"(*e.*) If the so-called trade-mark does not contain the essentials necessary to constitute a trade-mark, properly speaking.

Reference to Exchequer Court—Jurisdiction of Court.

"2. The Minister of Agriculture may, however, if he thinks fit, refer the matter to the Exchequer Court of Canada, and in that event such court shall have jurisdiction to hear and determine the matter, and to make an order determining whether and subject to what conditions, if any, registration is to be permitted.]

As now in force (1895). The above section, as formerly existing in ch. 63 of *The Revised Statutes of Canada*, was first amended by 53 Vict., ch. 14 (1890) and finally by 54-55 Vict., ch. 35, (1891).

Jurisdiction of Court as to entries in register—Costs.

["12. The Exchequer Court of Canada may, on the information of the Attorney-General, or at the suit of any person aggrieved by any omission, without sufficient cause, to make any entry in the register of trade-marks, or by an entry made therein without sufficient cause, make such order for making, expunging or varying the entry as the court thinks fit, or the court may refuse the application, and in either case may make such order with respect to the costs of the proceedings as the court thinks fit:

Rectification of Register.

"2. The said court may, in any proceeding, under this section, decide any question that may be necessary or expedient to decide for the rectification of such register:

Alterations of Trade-marks.

"3. The registered proprietor of any registered trade-mark may apply to the Exchequer Court of Canada for leave to add to or alter such mark in any particular, not being an essential particular, and the court may refuse or grant leave on such terms as it may think fit:

The name of a trade-mark having been given by telephone and erroneously understood to be "Dr. Agnew's Catarrh Powders," it was subsequently registered as such. The error having been discovered and it being ascertained that the real name and that actually telephoned was "Dr. Agnew's Catarrhal Powder," an application was made to the Department of Agriculture, under section 21, ch. 63, R.S.C., to rectify such error. The application was refused by the Minister on the ground that it was not a clerical error coming within the meaning of section 21, but a proper matter to be brought before the Exchequer Court under the provisions of section 12 of the Act as amended by 54-55 Vict., ch. 35.

Upon an application made before the Exchequer Court, under the provisions of section 12, the said trade-mark was ordered to be altered and rectified as prayed for, and without costs. *In re Detchon*, Jan. 21st, 1895.

Notice to Minister.

"4. Notice of an intended application to the Court under the last preceeding sub-section of this section shall be given to the Minister of Agriculture, and he shall be entitled to be heard on the application:

Procedure on Orders of Court.

"5. A certified copy of every order of the court for the making, expunging or varying of any entry in the register of trade-marks, or for adding to or altering any registered trade mark shall be transmitted to the Minister of Agriculture by the registrar of the court, and such register shall thereupon be rectified or altered in conformity with such order, or the purport thereof shall otherwise be duly entered in the register, as the case may be.]

As amended by 54-55 *Vict., ch.* 35 (1891).

1. *Trade-mark—Jurisdiction—Rectification of Register.*—Burbidge, J., in dealing with the question of jurisdiction of the court respecting infringement of trade-marks, since the amending Act of 54-55 Vict., ch. 35, said, in re DeKuyper v. Van Dulkin, 4 Ex. C. R. 71-91: "The court has no "general authority or jurisdiction to restrain one person from selling his "goods as those of another, or to give damages in such a case, or to "prevent any one from adopting, in his business, labels or devices that "may be calculated to deceive or mislead the public, unless the use of such "labels or devices constitute an infringement of a registered trade-mark. "(R.S.C. ch. 63, sec 19; 54-55 Vict. ch, 26, sec. 4 (c).) In such a case as

"has been pointed out the point is not whether there has been an infringement of the mark which the plaintiff has used in his business, but "whether there has been an infringement of the mark which he has "actually registered." Sebastian, 3rd Edn. p. 137, citing *Ellis & Sons v. Ruthin Soda Water Co.*

It was further held in the same case that when any one comes to register a trade-mark as his own, and to say to the rest of the world "here is something that you may not use" he ought to make clear to every one what the thing is that may not be used.

In the certificate of registration the plaintiffs' trade-mark was described as consisting of "the representation of an anchor with the letters 'J. D. K. & Z;' or the words 'John DeKuyper & Son, Rotterdam, &c.' as per the annexed drawings and application." In the application the trade-mark was claimed to consist of a device or representation of an anchor inclined from right to left in combination with the letters "J. D. K. & Z.," or the words 'John DeKuyper & Son, Rotterdam,' which, it was stated, might be branded or stamped upon barrels, kegs, cases, boxes, capsules, casks, labels, and other packages containing geneva sold by plaintiffs. It was also stated in the application that on bottles was to be affixed a printed label, a copy or *fac simile* of which was attached to the application, but there was no express claim of the label itself as a trade-mark. This label was white and in the shape of a heart with an ornamental border of the same shape, and on the label was printed the device or representation of the anchor with the letters "J. D. K. & Z.' and the words 'John DeKuyper & Son, Rotterdam,' and also the words 'Genuine Hollands Geneva' which it was admitted were common to the trade. The plaintiffs had for a number of years, prior to registering their trade-mark used this white heart-shaped label on bottles containing geneva sold by them in Canada, and they claimed that by such use and registration they had acquired the exclusive right to use the same. It was held that the shape of the label did not form an essential feature of the trade-mark as registered.

The defendants' trade-mark was, in the certificate of registration, described as consisting of an eagle having at the feet "V. D. W. & Co.," above the eagle being written the words "Finest Hollands Geneva"; on each side are the two faces of a medal; underneath on a scroll the name of the firm "Van Dulken, Weiland & Co.," and the word "Schiedam," and lastly, at the bottom the two faces of a third medal, the whole on a label in the shape of a heart (*le tout sur une étiquette en forme de coeur*). The colour of the label was white. And it was held that in view of the plaintiffs' prior use of the white heart-shaped label in Canada, and the allegation by the defendants, in their pleadings, that the use of a heart-shaped label was common to the trade prior to the plaintiffs' registation of their trade-mark, that the defendants had no exclusive right to the use of the said label, and that the entry of registration of their trade-mark should be so rectified as to make it clear that the heart-shaped label forms no part of such trade-mark.

2. *Trade-mark—Rectification of register—Jurisdiction.*—The Exchequer Court has jurisdiction to rectify the register of trade-mark in respect of entries made therein without sufficient cause either before or subsequent to the 10th day of July, 1891, the date on which the Act 54-55 Vict. ch. 35 came into force. *Quere?* Has the court jurisdiction to give relief for the infringement of a trade-mark where the cause of action arose out of acts done prior to the passage of 54-55 Vict, ch. 26? *DeKuyper v. Van Dulken*, 3 Ex. C. R. 88.

3. *Registration—Trade-mark—Calculated to deceive.*—The registration of a conflicting trade-mark will be refused when it appears that it is calculated to deceive and mislead. It is not the competition between trade-marks, but the deception itself in representing the goods to be what they are not, that is objectionable. *Saburon, On trade-marks*, 39.

4. *Limited assignment—Cancellation of registration in favour of prior assignee under unlimited assignment.*—Where respondents had obtained the exclusive right to use a certain trade-mark in the Dominion of Canada only, and had registered the same, and claimants subsequently applied to register it as assignees under an unlimited assignment thereof made before the date of the instrument under which respondents claimed title, the prior registration was cancelled. *The J. P. Bush Manufacturing Co. v. Hanson*, 2 Ex. C.R. 557.

5. *Trade-mark—Cancellation of registration in favour of prior transferee.*—In the year 1885, the respondents, by their corporate title, registered a trade-mark, consisting of a label with the name "Snow Flake Baking Powder" printed thereon, in the Department of Agriculture. Some four years after such registration by respondents, the claimant applied to register the word-symbol "Snow Flake" as a trade-mark for the same class of merchandise,—stating that he knew of the respondents' registration, and alleging that it was invalid by reason of prior use by him and his predecessors in title. The evidence sustained the claimant's allegations. And it was *held* that the word-symbol in question had become the specific trade-mark of the claimant by virtue of first use, and that the registration by respondents must be cancelled. *Groff v. The Snow Drift Baking Powder Co.*, 2 Ex. C. R. 568.

Mode of registration and certificate thereof—Certificate to be evidence.

13. On compliance with the requirements of this Act and of the rules hereinbefore provided for, the Minister of Agriculture shall register the trade-mark of the proprietor so applying, and shall return to the said proprietor one copy of the drawing and description with a certificate signed by the Minister or the deputy of the Minister of Agriculture to the effect that the said trade-mark has been duly registered in accordance with the provisions of this Act; and the day, month and year of the entry of the trade mark in the register shall also be set forth in such certificate; and every such certificate, purporting to be so signed, shall be received in all courts in Canada, as *primâ facie* evidence of the facts therein alleged without proof of the signature. 42 Vict., ch. 22, s. 7.

Suit may be maintained by proprietor.

18. An action or suit may be maintained by any proprietor of a trade mark against any person who uses his registered trade-mark, or any fraudulent imitation thereof, or who sells any article bearing such trade-mark or any such imitation thereof, or contained in any package being or purporting to be his, contrary to the provisions of this Act. 42 Vict., ch. 22, s. 17.

No suit unless trade-mark is registered.

19. No person shall institute any proceeding to prevent the

infringement of any trade-mark, unless such trade-mark is registered in pursuance of this Act. 42 Viet, ch. 22, s. 4, *part*.

INDUSTRIAL DESIGNS.

Register of industrial designs to be kept—Registration—Certificate and its effect.

22. The Minister of Agriculture shall cause to be kept a book to be called "The Register of Industrial Designs," in which any proprietor of a design may have the same registered on depositing with the Minister a drawing and description in duplicate of such design, together with a declaration that the same was not in use to his knowledge by any other person than himself at the time of his adoption thereof; and the Minister, on receipt of the fee hereinafter provided, shall cause such design to be examined to ascertain whether it resembles any other design already registered; and if he finds that such design is not identical with, or does not so closely resemble any other design already registered as to be confounded therewith, he shall register the same, and shall return to the proprietor thereof one copy of the drawing and description, with a certificate signed by the Minister or the deputy of the Minister of Agriculture, to the effect that such design has been duly registered in accordance with the provisions of this Act; and such certificate shall also set forth the day, month and year of the entry thereof in the proper register; and every such certificate purporting to be so signed, shall, without proof of the signature, be received in all courts in Canada, as *primâ facie* evidence of the facts therein alleged. 42 Viet., ch. 22, section 20.

Certificate to be given and its effect—To be evidence.

28. On the copy returned to the person registering, a certificate shall be given, signed by the Minister of Agriculture or the deputy of the Minister of Agriculture, showing that the design has been registered, the date of registration, the name of the registered proprietor, his address, the number of such design, and the number or letter employed to denote or correspond to the registration—which said certificate, in the absence of proof to the contrary, shall be sufficient proof of the design, of the name of the proprietor, of the registration, of the commencement and term of registry, of the person named as proprietor being proprietor, of the originality of the design, and of compliance with the provisions of this Act; and generally the writing purporting to be so signed shall be received as *primâ facie* evidence of the facts therein stated, without proof of the signature. 42 Viet., ch. 22, s. 32.

Jurisdiction of Court as to industrial designs.

["33. The Exchequer Court of Canada shall, in respect of the register of industrial designs, have jurisdiction in a like

proceeding and manner as hereinbefore provided in respect of the register of trade-marks, to make orders for the making, expunging or varying any entry in such register of industrial designs, or for adding to or altering any industrial design."]

As amended by 54-55 Vict., ch. 35.—For the nature of the jurisdiction conferred upon the Exchequer Court as referred to in the above section in respect of the register of trade-marks, see sections 11 and 12 of this Act, as amended by 54-55 Vict., ch. 35, at page 169.

Suit may be maintained by the proprietor.

35. A suit may be maintained by the proprietor of any design for the damages he has sustained by the application or imitation of the design, for the purpose of sale, against any person so offending—if the offender was aware that the proprietor of the design had not given his consent to such application. 42 Vict., ch. 22, s. 28.

Time for suits limited.

36. All proceedings under the preceeding sections of this Act, respecting industrial designs, shall be brought within twelve months from the commission of the offence, and not afterwards; and none of the provisions of the said sections shall apply to protect any design which does not belong to a person resident within Canada, and which is not applied to a subject matter manufactured in Canada. 42 Vict., ch. 22, s. 31.

The Customs Act.

PART OF CHAPTER 32 OF THE REVISED STATUTES OF CANADA.

(As amended by 51 Vict., ch. 11 and 52 Vict., ch. 14.)

CHAPTER 32.

A.D. 1886.—An Act respecting the Customs.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title.

1. This Act may be cited as "*The Customs Act.*" 46 Vict., ch. 12, s. 1.

INTERPRETATION.

Interpretation — Port — Collector — Officer — Vessel — Vehicle — Master — Conductor — Owner, &c. — Goods — Warehouse — Customs Warehouse — Oath — Seized and forfeited, &c. — Value — Commissioner of Customs — Frontier Port — Court — General provisions.

2. In this Act, or in any other laws relating to the Customs, unless the context otherwise requires:—

(*a.*) The expression "port" means a place where vessels or vehicles may discharge or load cargo;

(*b.*) The expression "collector" means the Collector of the Customs at the port or place intended in the sentence, or any person lawfully deputed, appointed or authorized to do the duty of collector thereat;

(*c.*) The expression "officer" means an officer of the Customs;

(*d.*) The expression "vessel" means any ship, vessel or boat of any kind whatsoever, whether propelled by steam or otherwise, and whether used as a sea-going vessel or on inland waters only, unless the context is manifestly such as to distinguish one kind or class of vessels from another, and the word "vessel" includes "vehicle;"

(*e.*) The expression "vehicle" means any cart, car, waggon, carriage, barrow, sleigh or other conveyance of what kind soever, whether drawn or propelled by steam, by animals, or by hand or other power, and includes the harness or tackle of the animals, and includes also the fittings, furnishings and appurtenances of the vehicle;

(*f.*) The expression "master" means the person having or taking charge of any vessel or vehicle;

(*g.*) The expression "conductor" means the person in charge, or having the chief direction of any railway train;

(*h.*) The expression "owner," "importer," or "exporter" means the owners, importers or exporters, if there are more than one in any case, and includes persons lawfully acting on their behalf;

(*i.*) The expression "goods" means goods, wares and merchandise, or movable effects of any kind, including carriages, horses, cattle and other animals, except where these latter are manifestly not intended to be included by the said expression;

(*j.*) The expression "warehouse" means any place, whether house, shed, yard, dock, pond or other place in which goods imported may be lodged, kept and secured without payment of duty;

(*k.*) The expression "Customs warehouse" includes sufferance warehouse, bonding warehouse and examining warehouse;

(*l.*) The expression "oath" includes declaration and affirmation:

(*m.*) The use of the expressions "seized and forfeited," "liable to forfeiture," or "subject to forfeiture," or any other expression which might of itself imply that some act subsequent to the commission of the offence is necessary to work the forfeiture, shall not be construed as rendering any such subsequent act necessary, but the forfeiture shall accrue at the time of and by the commission of the offence, in respect of which the penalty of forfeiture is imposed:

[(*n.*) The expression "value" in respect of any penalty or forfeiture imposed by this Act, and based upon the value of any goods or articles, means the duty-paid value of such goods or articles at the time of the commission of the offence by which such penalty or forfeiture is incurred:]

[(*o.*) Except in section four, the expression "Commissioner of Customs" includes the Assistant Commissioner of Customs;]

[(*p.*) The expression "frontier post" means the first port at which the vehicle carrying the goods to be entered arrives by land in Canada after crossing the frontier, and the sea, lake or river port at which the vessel in which the goods are carried arrives direct from a port or place out of Canada;]

[(*q.*) The expression "Court" means the Exchequer Court of Canada, or any Superior Court, or Court of Vice Admiralty.]

By section 2 of 51 Vict., ch. 14, sec. 2, of *The Customs Act* was amended by inserting after subsection (*m*) thereof, the foregoing subsections, (*n.*) (*o.*) (*p.*) and (*q*).

All the expressions and provisions of this Act or of any such law as aforesaid, shall receive such fair and liberal construction and interpretation as will best insure the protection of the revenue and the attainment of the purpose for which this Act or such law was made, according to its true intent, meaning and spirit. 46 V., c. 12, s. 4.

DEPARTMENT OF CUSTOMS.

Department constituted.

3. There shall be a department of the Civil Service which shall be called the "Department of Customs," over which the Minister of Customs, for the time being, appointed by the Governor General, by commission under the Great Seal, shall preside. 31 Vict., ch. 43, s. 1.

Commissioner and Assistant Commissioner—Board of Customs.

4. There shall be a Commissioner of Customs, who shall be the Deputy of the Minister of Customs, and an Assistant Commissioner, appointed by the Governor in Council, both of whom shall hold office during pleasure, and shall have such powers and perform such duties, respectively, as are assigned to them by the Governor in Council, or by the Minister of Customs. 31 Vict., ch. 43, s. 2.

["2. There shall be a Board of Customs, which shall consist of the Commissioner of Customs, the Assistant Commissioner of Customs and the Dominion Customs Appraisers and Assistant Dominion Customs Appraisers hereinafter mentioned, and the said Board shall have such powers and perform such duties, respectively, as are assigned to it by this Act, by the Governor in Council or by the Minister of Customs."]

As amended by section 3 of 51 Vict., ch. 14.—The original section has been amended by adding thereto the above subsection 2.

Of what matters the Department shall have the control.

5. The Department of Customs shall have the control and management of the collection of the duties of Customs, and of matters incident thereto, and of the officers and persons employed in that service. 31 Vict., ch. 43, s. 3, *part*.

Duties and penalties if any, to be a debt to Her Majesty, and how recoverable.

7. The true amount of Customs duties payable to Her Majesty with respect to any goods imported into Canada or exported therefrom, and the additional sum, if any, payable under the next following section of this Act, shall, from and after the time when such duties should have been paid or accounted for, constitute a debt due and payable to Her Majesty, jointly and severally, from the owner of the goods at the time of the importation or exportation thereof, and from the importer or exporter thereof, as the case may be; and such debt may, at any time, be recovered with full costs of suit, in any court of competent jurisdiction. 46 Vict., c. 12, s. 15.

Duty, penalties.—The additional duty of 50 per cent. on the true duty, payable for undervaluation under section 102 of *The Customs Act*, 1883, is a debt due to Her Majesty which is not barred by the three years' prescrip-

tion contained in section 207, but may be recovered at any time in a court of competent jurisdiction. *Quære:* Is such additional duty a penalty? *The Vacuum Oil Co. v. The Queen*, 2 Ex. C. R. 234.

Collector to retain and file invoices—Certified copies to be evidence—Fee—Proviso.

48. The collectors of Customs at all ports in Canada, shall retain and put on file, after duly stamping the same, all invoices of goods imported at such ports respectively—of which invoices they shall give certified copies or extracts, whenever called upon so to do by the importers,—and such copies or extracts so duly certified by the collector or other proper officer and bearing the stamp of the Custom House at which they are filed, shall be considered and received in all courts of justice as *primâ facie* evidence of the contents thereof; and the collector shall be entitled to demand for each certificate a fee of fifty cents before delivering the same; but in no case shall an invoice be shown to or a copy thereof given to any person other than the said importer, or an officer of Customs, except upon the order or subpœna of a court of justice. 46 Vict, c. 12, s. 95.

Writs of assistance in the several provinces—Duration of writ—As to district of Keewatin.

141. Any judge of the Exchequer Court of Canada, or any judge of any of the superior courts in any Province of Canada, having jurisdiction in the province or place where the application is made, shall grant a writ of assistance upon application made to him for that purpose by Her Majesty's Attorney General of Canada or by a collector of Customs, or by any superior officer of Customs; and such writ shall remain in force so long as any person named therein remains an officer of the Customs, whether in the same capacity or not:

["2. For the purposes of this section, any judge of the Court of Queen's Bench, in the Province of Manitoba, shall have jurisdiction over the district of Keewatin, and shall grant a writ of assistance for use therein, in like manner and with like effect as he might grant such writ for use in the Province of Manitoba."]

Subsection two to the above section has been amended, by section 28 of 51 Vict. ch. 14, by striking out from the same the words "over the North-West Territories."

Existing writs to remain in force.

142. Every writ of assistance granted before the coming into force of this Act, under the authority of Acts relating to the Customs now repealed shall remain in force, notwithstanding such repeal, in the same manner as if such Acts had not been repealed. 46 Vict., c. 12, s. 178.

Searching for smuggled goods.

["**143.** Under the authority of a writ of assistance any officer of the Customs, or any person employed for that purpose

with the concurrence of the Governor in Council, expressed either by special order or appointment or by general regulation, may enter, at any time in the day or night, into any building or other place within the jurisdiction of the court from which such writ issues, and may search for and seize and secure any goods which he has reasonable grounds to believe are liable to forfeiture under this Act, and in case of necessity may break open any doors and any chests or other packages for that purpose."]

As amended by section 29 of 51 Vict. ch. 14. The original section has been amended by adding after the words "seize and secure any goods," on the eighth line thereof, the following words "which he has reasonable grounds to believe are."

Power to call for aid—Reasonable suspicion to justify officers.

144. Any officer or person in the discharge of the duty of seizing goods, vessels, vehicles or property liable to forfeiture under this Act, may call in such lawful aid and assistance in the Queen's name, as is necessary for securing and protecting such seized goods, vessels, vehicles or property; and if no such prohibited, forfeited or smuggled goods are found, such officer or person, having had reasonable cause to suspect that prohibited, forfeited or smuggled goods would be found, shall not be liable to any prosecution, action or other legal proceedings on account of any such search, detention or stoppage. 46 V., c. 12, s. 173.

PROTECTION OF OFFICERS.

Action for things done under this Act, &c—Notice thereof—What the notice shall contain—Evidence on trial.

[**145.** No action, suit or proceeding shall be commenced, and no writ shall be sued out against, nor a copy of any process served upon any officer of the Customs or persons employed for the prevention of smuggling for anything done in the exercise of his office, or against any person in possession of goods under authority of any officer of the Customs, so long as any proceeding for the enforcement of this Act in relation to the matter forming the ground for such action, suit, proceeding, writ or process, is pending, nor until one month after notice in writing has been delivered to him, or left at his usual place of abode, by the attorney or agent of the person who intends to sue out such writ or process:

"2. In such notice shall be clearly and explicitly contained the cause of the action, the name and place of abode of the person who is to bring such action, and the name and place of abode of the attorney or agent; and no evidence of any cause of such action shall be produced except of such as is contained in such notice, and no verdict or judgment shall be given for the plaintiff, unless he proves on the trial that such notice was given; and in default of such proof, the defendant shall receive a verdict or judgment and costs."]

As amended by section 30 of 51 Vict., ch. 14. The original section has been amended by adding after the words " in the exercise of his office," in the fifth line thereof, the following words, " or against any person in " possession of goods under authority of any officer of the Customs, so long " as any proceeding for the enforcement of this Act in relation to the " matters forming the ground of such action, suit, proceeding, writ or pro- " cess, is pending, nor."

The officers of the Public Works Department engaged in collecting slidage and boomage dues, under 52 Vict., ch. 19, cannot invoke the protection, in respect of anything done by them in the exercise of the duties of their office, as afforded by the R.S.C., ch. 34, ss. 77-81 to the officers of the Inland Revenue Department who, up to the passage of the first mentioned Act, were charged with the collection of such dues. *Semble*, also that an officer may be liable, though there be no excess of authority or breach of duty, if, in the exercise of his powers, he is guilty of harsh and oppressive conduct. *Boyd v. Smith*, 4 Ex. C.R. 116.

Since the above decision remedial legislation has been resorted to and by 57-58 Vict., ch. 19, sec. 1, amending *The Consolidated Revenue and Audit Act*, the distinction between the above-mentioned officers has been done away with. Any officer acting now in any office or employment connected with the collection of the revenue, etc., etc.—(see Act) enjoys the same immunity.

Defendant may tender amends and plead tender in bar—Costs to defendant if successful—Payment into Court.

146. Any such officer or person against whom any action, suit or proceeding is brought on account of anything done in the exercise of his office, may, within one month after such notice, tender amends to the person complaining, or his agent, and plead such tender in bar to the action, together with other pleas; and if the court or jury, as the case may be, find the amends sufficient, judgment or verdict shall be given for the defendant; and in such case, or if the plaintiff becomes non-suited, or discontinues his action, or judgment is given for the defendant upon demurrer or otherwise, such defendant shall be entitled to full costs of defence;

2. The defendant, by leave of the court in which the action is brought, may, at any time before issue joined, pay money into court as in other actions. 46 Vict., ch. 12, s. 227.

Action must be brought within a certain time.

147. Every such action, suit or proceeding shall be brought within three months after the cause thereof, and laid and tried in the place or district where the acts complained of were committed; and the defendant may plead the general issue, and give the special matter in evidence. 46 Vict., ch. 12 s. 228.

If probable cause is certified on record damages and costs to be limited—When action for recovery of thing seized may be commenced—Limitation.

148. If in any such action, suit or proceeding, the court or judge before whom the action is tried certifies that the defend-

ant in such action acted upon probable cause, the plaintiff in such action shall not be entitled to more than twenty cents damages nor to any costs of suit, nor in case of a seizure shall the person who made the seizure be liable to any civil or criminal suit or proceeding on account thereof. 46 Vict., ch. 12, s. 229.

["2. No action, suit or proceeding shall be commenced against the Crown or against any officer of Customs or person employed for the prevention of smuggling, or against any person in possession of goods under authority of an officer of Customs, for the recovery of things seized, until a decision has been first given either by the Minister of Customs or by a court of competent jurisdiction in relation to the condemnation of the thing seized:"]

["3. Every such action, suit or proceeding shall be brought within three months after such decision has been given."]

In pursuance of 51 Vict., ch. 14, sec. 31, the original section 148 has been amended by adding thereto the above subsections two and three.

Sections 151-152-153 relate to oaths and affirmations and direct before whom they must be taken.

Certain certified documents to be prima facie evidence.

156. Certificates and copies of official papers, certified under the hand and seal of any of the principal officers of the Customs in the United Kingdom, or of any collector of Colonial revenue in any of the British Possessions in America or the West Indies, or other British Possessions, or of any British Consul or Vice Consul in a foreign country, and certificates and copies of official papers made pursuant to this Act or any Act in force in Canada relating to the Customs or revenue, shall be received as *primâ facie* evidence in reference to any matter contained in this Act or any Act relating to the Customs, or on the trial of any suit in reference to any such matter. 46 Vict., ch. 12, s. 245.

Burden of proof of due entry, on whom to lie.

167. The burden of proof that the proper duties payable with respect to any goods have been paid, and that all the requirements of this Act with regard to the entry of any goods have been complied with and fulfilled, shall, in all cases, lie upon the person whose duty it was to comply with and fulfil the same. 46 Vict., ch. 12, s. 113.

Over-paid duties not returnable after three years.

168. Although any duty of Customs has been overpaid, or although, after any duty of Customs has been charged and paid, it appears or is judicially established that the same was charged under an erroneous construction of the law, no such overcharge shall be returned after the expiration of three years from the date of such payment, unless application for repayment has been previously made. 46 Vict., ch. 12, s. 240.

Seizure or detention to be reported to Commissioner of Customs.

177. Whenever any vessel, vehicle, goods or thing have been

seized or detained under any of the provisions of this Act or of any law relating to the Customs, or when it is alleged that any penalty or forfeiture has been incurred under the provisions of this Act or of any law relating to the Customs, the collector or the proper officer shall forthwith report the circumstances of the case to the Commissioner of Customs. 46 Vict., ch. 12, s. 218.

Where there has been nothing done by the master to show an intent to defraud the Customs, a vessel entering a port for shelter, before reaching a place of safety there, has not "arrived" at such port within the meaning of 40 Vict., ch. 10, s. 12 so as to justify seizure of her cargo for not reporting to the Customs authorities. And where false statements are made by the master regarding the character of the cargo and port of destination of his vessel, which would subject him to a penalty under sub-sec. 2 of sec. 12, 40 Vict., ch. 10, they cannot be relied on to support an information claiming forfeiture of the cargo for his not having made a report in writing of his arrival as required by sub-sec. 1, s. 12 of the said Act. *The Queen v. MacDonell*, 1 Ex. C. R. 99.

Commissioner to call upon owner or claimant of thing seized for statement under oath.

178. The Commissioner may thereupon notify the owner or claimant of the thing seized or detained, or his agent, or the person alleged to have incurred the penalty or forfeiture, or his agent of the reasons for the seizure, detention, penalty or forfeiture, and call upon him to furnish within thirty days from the date of the notice, such evidence in the matter as he desires to furnish; such evidence may be by affidavit or affirmation, made before any justice of the peace, any collector of Customs, any commissioner for taking affidavits in any court, or any notary public. 46 Vict., ch. 12, s. 219.

Commissioner to report his opinion to Minister.

179 After the expiration of the said thirty days, or sooner if the person so called upon to furnish evidence so desires, the Commissioner may consider and weigh the circumstances of the case, and report his opinion and recommendation thereon to the Minister of Customs. 46 Vict., ch. 12, s. 220.

Action of Minister.

[" **180.** The Minister may thereupon either give his decision in the matter respecting the seizure, detention, penalty or forfeiture, and the terms, if any, upon which the thing seized or detained may be released or the penalty or forfeiture remitted, or may refer the same to the court for decision."]

As amended by 51 Vict. ch. 14, section 34. The original section has been entirely repealed and the above substituted therefor.

By section 34 of the amending Act the original sections 180 to 187, both inclusive, have been repealed and the new legislation enacted in lieu thereof has had for effect to vest in the Exchequer Court a jurisdiction for the decision of the matters in dispute under *The Customs Act*, as herein set forth.

Minister's decision final in default of notice.

["**181.** If the owner or claimant of the thing seized or detained, or the person alleged to have incurred the penalty does not, within thirty days after being notified of the Minister's decision, give him notice in writing that such decision will not be accepted, the decision shall be final."]

As amended by 51 Vict. ch. 14, sec. 31. The original section has been entirely repealed by the amending Act and the above substituted in lieu thereof.

Reference to the Court.

["**182.** If the owner or claimant of the thing seized or detained, or the person alleged to have incurred the penalty, within thirty days after being notified of the Minister's decision, gives him notice in writing that such decision will not be accepted, the Minister may refer the matter to the court."]

This section has been substituted by 51 Vict., ch. 14, sec. 34, for section 182 as it stood in chapter 32 of *The Revised Statutes*. See Rules 18 and 19, respecting the procedure to be followed before this court on a reference from the Customs Department.

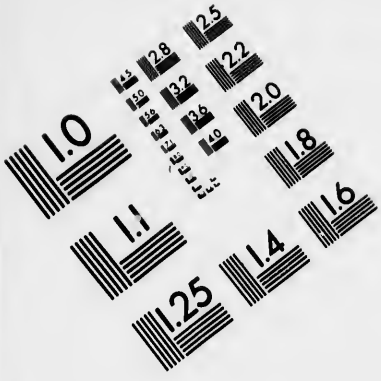
Proceedings in Court.

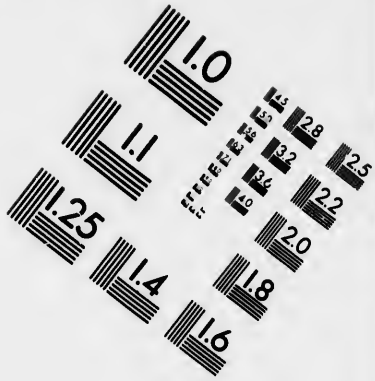
["**183.** On any reference of any matter by the Minister to the court—the court shall hear and consider such matter upon the papers and evidence referred and upon any further evidence which the owner or claimant of the thing seized or detained, or the person alleged to have incurred the penalty, or the Crown, produces, under the direction of the court, and shall decide according to the right of the matter; and judgment may be entered upon any such decision, and the same shall be enforceable and enforced in like manner as other judgments of the court."]

As amended by 51 Vict. ch. 14, sec. 31. The original section has been totally repealed and this new one substituted therefor. It deals entirely with a new subject which was not provided for by the old section. See Rules of Practice Nos. 18 and 19 respecting the procedure to be followed before the Exchequer Court on a reference from the Department of Customs.

1. *Evidence by affidavit.*—Where in a case coming before this court on a reference under the provisions of sections 182 and 183 of *The Customs Act* (as amended by 51 Vict. ch. 14) evidence taken by affidavits sworn to in Scotland since the Reference had been made to the court and in support of the main issue or gravamen of the case, was tendered at trial: *Held*, that such evidence by affidavits should be refused because cross-examination of the deponents who had sworn to these affidavits was not afforded to the opposite party, cross-examination being a most important machinery by which courts of justice get evidence. *Dominion Bag Co. v. The Queen*. Dec. 7th, 1894.

2. *Market value.*—Where the constituent parts or ingredients of a specific article are imported, their value for duty within the meaning of sections 68 and 69 of *The Customs Act*, 1883, is not the fair market value of the completed article in the place of exportation, but is simply the fair





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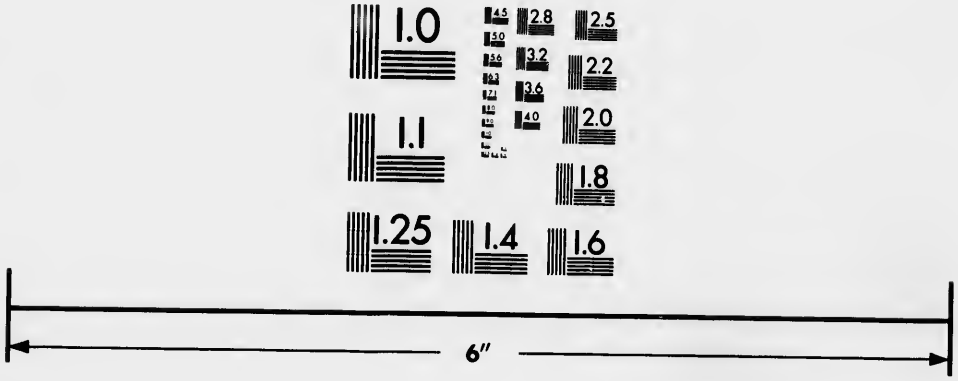

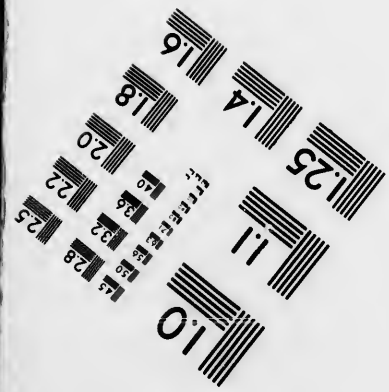

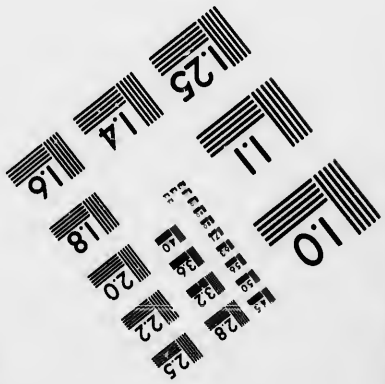

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market value there of the several ingredients. The form in which the material is imported constitutes the discriminating test of the duty.—*The Queen v. Ayer Co.*, 1 Ex. C. R. 232.

3. *Customs—Construction of doubtful interpretation in favour of importer.*—Notwithstanding the interpretation clause in *The Customs Act*, 1883, which provides that Customs laws shall receive such liberal construction as will best insure the protection of the revenue, &c., in cases of doubtful interpretation the construction should be in favour of the importer. *Ibid.*

4. *Intent to defraud.*—Where an importer openly imports goods and pays all the duties imposed on them at the fair market value thereof in the place of exportation at the time the same were exported, he has not imported such goods with intent to defraud the revenue simply because he had the mind to do something with them, which, had it been done in the country from which they were exported would have enhanced their value, and, consequently, made them liable to pay a higher rate of duty, but which in fact was never done before the goods came into his possession after passing the Customs. *Ibid.*

5. *Tariff Act* 1886—*"Shaped" lumber.*—Under item (departmental No.) 726 in schedule "C" of the *Tariff Act* (1886) oak lumber sawn, but not "shaped, planed, or otherwise manufactured," may be imported into Canada free of duty. M. imported a quantity of white oak lumber from the United States which had been sawn to certain dimensions so as to admit of it being used in the manufacture of railway cars and trucks without waste of material, but yet before being used for such purpose had to be recut and fitted. *Held* that the lumber, being merely sawn to such dimensions as would enable it to be worked up without waste, was not "shaped" within the meaning of the *Tariff Act*, and was not dutiable. *Magann v. The Queen*, 2 Ex. C.R. 64.

6. *Goods in transitu—Customs-duties.*—A. made two shipments of tea from Japan to New York for transportation in bond to Canada. In one case the bills of lading were marked "in transit to Canada;" in the other the teas appeared upon the consular invoice made at the place of shipment to be consigned to A.'s brokers in New York for transhipment to Canada. On the arrival of both lots at New York, and pending a sale thereof in Canada, they were allowed to be sent to a bonded warehouse as unclaimed goods for some five or six months and were finally entered at the New York Custom House for transportation to Canada, and forwarded to Montreal. There being nothing to show that A. at any time proposed to make any other disposition of the teas, and there being nothing in what he did that contravened the laws or regulations of the United States or of Canada with respect to the transportation of goods in bond; it was *held*, affirming the judgment of the Exchequer Court, (2 Ex. C.R. 126) that as it clearly appeared that the tea was never entered for sale or consumption in the United States; that it was shipped from there within the time limited by law for goods in transit to remain in a warehouse; and that no act had been done changing its character during transit, it was therefore "tea imported into Canada from a country other than the United States but passing in bond through the United States," and under sec. 10 of the Act relating to duties of customs (R.S.C. ch. 33) not liable to duty as goods exported from the United States to Canada. But see now 52 Vic., ch. 14 (D). *Carter Macey & Co., v. The Queen*, 18 Can. S.C.R. 706.

7. *Market Value—Undervaluation.*—The suppliants, who were manufacturers of oil in the United States, sold some of their oils in retail lots to

purchasers in Canada. The price of such oils to the consumer at Rochester was taken as a basis upon which the price per gallon to the Canadian purchaser was made up, but the goods were entered for duty at a lower value,—two sets of invoices being used, one for the purchaser in Canada, and the other for the Company's broker at the port of entry. It was *held* that the oils were undervalued.

The supplants, however, having established a warehouse in Montreal as the distributing point of their Canadian business, exported oils from the United States to Montreal in wholesale lots. The invoices showed prices which were not below the fair market value of such oils when sold at wholesale for home consumption in the principal markets of the United States, and it was *held* that there was here no undervaluation. *The Vacuum Oil Co. v. The Queen*, 2 Ex. C.R. 234.

8. *Invoice best evidence of value of goods—Market value.*—When goods are procured by purchase in the ordinary course of business, and not under any exceptional circumstances, an invoice correctly disclosing the transaction affords the best evidence of the value of such goods for duty. In such a case the cost to him who buys the goods abroad is, as a general rule, assumed to indicate the market value thereof. It is presumed that he buys at the ordinary market value. *Ibid.*

9. *Market value.*—It is not the value at the manufactory, or place of production, but the value in the principal markets of the country, *i.e.*, the price there paid by consumers or middlemen to dealers, that should govern. Such value for duty must be ascertained by reference to the fair market value of such, or like goods, when sold in like quantity and condition for home consumption in the principal markets of the country whence they are exported. *Ibid.*

10. *Market value—Value for duty.*—The rule for determining the value for duty of goods imported into Canada, prescribed by the 58th and 59th sections of *The Customs Act* (R.S.C. ch. 32), is not one that can be universally applied. When the goods imported have no market value in the usual and ordinary commercial acceptation of the term in the country of their production or manufacture, or where they have no such value for home consumption, their value for duty may be determined by reference to the fair market value for home consumption of like goods sold under like conditions. (*The Vacuum Oil Co. v. The Queen*, 2 Ex. C. R. 234 referred to.) *Smith and Patterson v. The Queen*, 2 E. C. R. 417.

11. *Value of goods—Misrepresentation—Costs.*—The goods in question in this case were part of a job lot of discontinued watch cases, and at the time of their sale for export were not being bought and sold in the markets of the United States. They could be purchased for sale or use there, but only at published prices which were greater than any one would pay for them.

The claimants bought the goods for export at their fair value, being about half such published prices. They let their agent in Canada know the prices paid, but withheld from him the fact that the purchase was made on the condition that the goods were to be exported. The agent, without intending to deceive the Customs appraiser, represented that the prices paid were those at which the goods could be had in the United States when purchased for home consumption. The representation was untrue. On the question of the alleged undervaluation the court found for the claimants, but, because of such misrepresentation, without costs. *Ibid.*

12. *Customs-duties—Article imported in parts—Rate of duty—Good faith—46 Viet., ch. 12, s. 153—Subsequent legislation—Effect of—Statu-*

tory declaration.—G., manufacturer of an "automatic sprinkler," a brass device composed of several parts, was desirous of importing the same into Canada, with the intention of putting the parts together there and putting the completed articles on the market. He interviewed the appraiser of hardware at Montreal, explained to him the device and its use, and was told that it should pay duty as a manufacture of brass. He imported a number of sprinklers and paid the duty on the several parts, and the Customs officials then caused the same to be seized, and an information to be laid against him for smuggling, evasion of payment of duties, undervaluation and knowingly keeping and selling goods illegally imported, under secs. 153 and 155 of *The Customs Act*, 1883, and it was *held*, reversing the judgment of the Exchequer Court, per Gwynne, J., that there was no importation of sprinklers, as completed articles, by G., and as the Act is not imposing a duty on parts of an article, the information should be dismissed, and further, that the subsequent passage of an Act (48-49 Vict., ch 61, s. 11, re-enacted by 49 Vict., ch. 32, s. 61, R.S.C.) imposing a duty on such parts was a legislative declaration that it did not previously exist. (But see now "*An Act to amend 'The Interpretation Act,'*" 53 Vict., ch. 7) *Grinnell v. The Queen*, 16 Can. S.C.R. 119.

13. *Smuggling—Evidence—Burden of proof.*—Where the Queen claims the forfeiture of imported goods which were carried past the Custom House without entry or permit, and that such goods are subsequently claimed by the owner who denies such charge, the *onus probandi* is on the owner. *Regina v. 1 Box of Jewellery*, 8 L. C. J. 130; 1 L. C. J. 85 and 31 Vict., ch, 6, sec 51, (Q).

14. *Customs-duties—Importation of steel rails for street railways—Word "railway."*—The word "railway" as used in (free) item 173 of the Tariff Act of 1887, 50-51 Vict., c. 39, does not include street railways. *Toronto Railway Co. v. The Queen*, 4 Ex. C. R. 262. (At the time of going to press this case is standing for [illegible]ment before the Supreme Court of Canada.)

15. *Construction of Revenue Act—General fiscal policy, reference to.*—In construing a revenue Act regard should be had to the general fiscal policy of the country at the time the Act was passed. When that is a matter of history reference must be had to the sources of such history, which are not only to be found in the Acts of Parliament, but in the proceedings of Parliament, and in the debates and discussions which take place there and elsewhere. This is a different matter from construing a particular clause or provision of the Act by reference to the intention of the mover or promoter of it expressed while the Bill or the resolution on which it was founded was before the House, which cannot be done under the rules which govern the construction of statutes.—*Ibid.*

16. *Custom-duties—R. S. C. ch. 32—Interpretation—Good faith—Importation of Jute cloth.*—By item 673 of R. S. C. 33, "Jute cloth as "taken from the loom, neither pressed, mangled, calendered nor in any "way finished, and not less than forty inches wide, when imported by "manufacturers of Jute bags for use in their own factories" was made free of duty. By item 261 of such Act it was provided that manufactures of Jute cloth not elsewhere specified should be subject to a duty of 20 per cent. *ad valorem*. The claimants, who where manufacturers of Jute bags, had for a number of years imported into Canada Jute cloth cropped after it was taken from the loom. Item 673 was susceptible of several interpretations, one of which was, that the Jute cloth so cropped should be entered free of duty, and in this construction the importers and the officers of Customs had concurred during

such period of importation, and the court *held* that inasmuch as the cloth in question had been, in good faith, entered as free of duty and manufactured into Jute bags and sold, and it would happen that if another construction than that so adopted by the importers and Customs officers was now put upon the statute the whole burden of the duty would fall upon the importers, the doubt as to such construction should be resolved in their favour. *Dominion Bag Co. v. The Queen*, 4 Ex. C. R. 311.

17. *Revenue Act, construction of.*—In construing a clause of a Tariff Act which governs the imposition of duty upon an article which has acquired a special and technical signification in a certain trade, reference must be had to the language, understanding and usage of such trade. *Ibid.*

18. *Customs Act, sec.* 185—*Right of the matter—Interpretation—Quære*:—Whether the words used in Section 183 of *The Customs Act* (as amended by 51 Vict. c. 14, s. 34) "the Court.....shall decide according to the rig'it of the matter" were intended by the legislature in any way or case to free the Court from following the strict letter of the law, and to give it a discretion to depart therefrom if the enforcement, in a particular case, of the letter of the law, would, in the opinion of the Court, work injustice? *Ibid.*

19. *Customs-duties*—50-51 *Vict. ch.* 39, *items* 88 *and* 173—*Steel rails for temporary use during construction of railway.*—Steel rails weighing twenty-five pounds per lineal yard to be temporarily used for construction purposes on a railway and not intended to form any part of the permanent track cannot be imported free of duty under item 173 of The Tariff Act of 1887 (50-51 Vict. c. 39). *Sinclair v. The Queen*, 4 Ex. C. R. 275.

20. *Customs-duties—R. S. C., ch.* 32, *sec.* 13—*Similitude Clause.*—In virtue of Clause 13 of *The Customs Act* (R. S. C. c. 32) the Court held that such rails (*see No.* 19, *supra*) should pay duty at the same rate as tramway rails (under 50-51 Vict. c. 39, item 88) to which of all the enumerated articles in the Tariff they bore the strongest similitude or resemblance. *Ibid.*

Service of Notice.

["**184.** The service of notice to produce evidence referred to in section one hundred and seventy-eight, and of the Minister's decision referred to in sections one hundred and eighty-one and one hundred and eighty-two, shall be sufficient if it is effected by sending such notice by mail in a registered letter addressed to the owner or claimant at his address, as stated in the report of the seizure; and the thirty days mentioned in the two sections last cited shall be computed from the date of the mailing of such notification."]

As amended by 51 Vict. ch. 14, sec. 34. The original section has been repealed and the above substituted in lieu thereof.

Production of books and papers in case of seizure of goods, &c.

["**185.** Whenever information has been given under oath to any officer of customs that goods or things have been unlawfully imported or entered, or whenever any goods have been seized or detained under any of the provisions of this Act, or of any law

relating to the Customs, the importer or exporter thereof, or the owner or claimant thereof, shall immediately upon being required so to do by a collector or other proper officer of Customs, produce and hand over all invoices, bills, accounts and statements of the goods so imported, entered, seized or detained, and of all other goods imported into Canada by him at any time within six years preceding such request, seizure or detention; and shall also produce for the inspection of such collector or other officer, and allow him to make copies of, or extracts from, all books of account, ledgers, day-books, cash-books, letter-books, invoice-books, or other books wherein any entry or memorandum appears respecting the purchase, importation, cost, value or payment of the goods so seized or detained, and of all other goods as aforesaid."]

As amended by 51 Vict., ch. 14, sec. 34.—The original section has been repealed and the above enacted in lieu thereof.

Penalty for witholding such books or papers—In such case allegations to be deemed proved in case of non-production.

["186. If any person required under the next preceding section to produce and hand over invoices, bills, accounts and statements, or to produce for inspection books of account, ledgers, day-books, cash-books, letter-books, invoice-books and other books, or to allow copies or extracts to be made therefrom, neglects or refuses so to do, he shall incur a penalty not exceeding five thousand dollars:

"2. Whenever any suit is instituted under the provisions of this Act or an order of the court is obtained, all invoices, accounts, books and papers relating to any imported goods, to which such suit or order relates, shall be produced in court or to any person whom the court directs, and if the same are not so produced within such time as the court prescribes, the allegations on the part of the Crown shall be deemed to be proved, and judgment shall be given as in a case by default; but this provision shall not relieve the person disobeying any such order from any other penalty or punishment which he may have incurred by disobedience of any such order."]

By 51 Vict., ch. 14, sec. 34 the original section has been repealed and the above substituted in lieu thereof.

Release of things seized on deposit of a sum equal to value and costs—Amount of penalty may be deposited—Disposal of such sum—Its forfeiture—Moneys not released to belong to the Crown—Burden of proof.

["187. Any collector or other proper officer of customs may, as may also the court with the consent of the collector or other proper officer of customs at the place where the things seized are, order the delivery thereof to the owner, on the deposit with the collector or other proper officer of customs in money of a sum

equal at least to the full duty-paid value (to be determined by the collector or other proper officer of customs) of the things seized and the estimated costs of the proceedings in the case; and any collector or other proper officer of customs may receive from any person charged with any contravention of this Act, although no seizure of goods has taken place, a sum in money equal to the full amount of the penalty or forfeiture to which he may be liable for such contravention (to be determined by the collector or other proper officer of customs) together with the estimated costs of the proceedings in the case:

"2. Any sum or sums of money so deposited shall be immediately deposited in some bank appointed for that purpose by competent authority, to the credit of the Minister of Finance and Receiver-General, there to remain until forfeited in due course of law or released by order of the Minister of Customs; and if such seized articles are condemned, or such penalty or forfeiture accrues to the Crown, either by suit in a court or by a decision of the Minister of Customs under this Act, the money deposited shall be forfeited."

"3. Any sum or sums of money so deposited shall, unless the same is or are released as in the next preceding subsection provided, become the property of Her Majesty for the public uses of Canada, subject to the provisions of section one hundred and ninety-one of this Act; and no proceedings against the Crown for the recovery thereof shall be instituted except within six months from the date of the deposit thereof; and in any such proceedings the burden of proof that the goods in respect of which such deposit was made had been duly entered and that all the provisions of this Act had been complied with, and that no penalty or forfeiture had accrued in respect thereof, shall lie upon the person seeking recovery of the sum or sums so deposited and not upon the Crown."]

As amended by 51 Vict. ch. 14 and 52 Vict. ch. 14. The first and second paragraphs of this section have been amended under 51 Vict. ch. 14, sec. 34, by giving to a proper officer of Customs the same powers as those possessed by the Collector himself with regard to the matters in question herein; and further by providing for the deposit and disposal of the amount of penalities and forfeitnre with the estimated costs of the proceedings in that connection, although no seizure of goods has taken place.

The third paragraph has been entirely added by 52 Vict. ch. 14, sec 13.

Cattle or perishable articles may be sold as if condemned—Proviso: for delivery of articles seized on sufficient security being given—As to deposit of money.

188. If the thing seized is an animal or a perishable article, the collector at whose port the same is, may sell the same so as to avoid the expense of keeping it or to prevent its becoming deteriorated in value: and the proceeds of such sale shall be deposited in some chartered bank to the credit of the Minister of Finance and Receiver-General, and shall abide the judgment of the court with respect to the condemnation of the thing seized, if proceed-

ings for condemnation are taken in court, or shall become the property of Her Majesty, if the thing seized becomes condemned without proceedings in court: Provided always, that the collector shall deliver up such animal or perishable article to the claimant thereof, upon such claimant depositing with him a sum of money sufficient in the opinion of the collector to represent the duty-paid value of the thing claimed, and the costs of any proceedings to be taken in court for the condemnation of the thing seized; and the money so deposited shall be paid into some chartered bank to the credit of the Minister of Finance and Receiver General, and shall be dealt with in the same manner as above provided for in the case of the proceeds of a sale of such thing. 46 Vict., ch. 12, s. 205.

Person making or authorizing false invoice not to recover any part or price of goods.

[" **201.** If any person makes, or sends, or brings into Canada, or causes or authorizes the making, sending or bringing into Canada, any invoice or paper, used or intended to be used as an invoice for Customs purposes, in which any goods are entered or charged at a less price or value than that actually charged, or intended to be charged for them, or in which the goods are falsely described, no sum of money shall be recoverable by such person, his assigns or representatives, for the price of such goods or any part thereof, or on any bill of exchange, note or other security, unless in the hands of an innocent holder for value without notice, made, given or executed for the price of such goods or any part of such price."]

The above section has been, by 51 Vict. ch. 14, sec. 39, substituted for the original section. *See The Vacuum Oil Co. v. The Queen*, 2 Ex. C. R. 234.

What shall be evidence of fraud.

[" **202.** The production or proof of the existence of any other invoice, account, document or paper made or sent by any person, or by his authority, wherein goods or any of them are charged or entered at or mentioned as bearing a greater price than that set upon them in any such invoice as in the next preceding section mentioned or in which the goods are falsely described, shall be *primâ facie* evidence that such invoice was intended to be fraudulently used for Customs purposes; but such intention, or the actual fraudulent use of such invoice, may be proved by any other legal evidence."]

By the amending Act, 51 Vict., ch. 14, sec. 39, the original section has been repealed and the above substituted therefor.

PROCEDURE.

In what courts penalties and forfeitures are recoverable.

[" **222.** All penalties and forfeitures incurred under this Act or any other law relating to the Customs or to trade or navi-

gation, may, in addition to any other remedy provided by this Act or by law, be prosecuted, sued for and recovered with full costs of suit, in the Exchequer Court of Canada or in any superior court or Court of Vice-Admiralty, having jurisdiction in that Province in Canada, where the cause of prosecution arises, or wherein the defendant is served with process; and if the amount of any such penalty or forfeiture does not exceed two hundred dollars, the same may also be prosecuted, sued for and recovered in any court having jurisdiction to that amount in the place where the cause of prosecution arises, or where the defendant is served with process."]

As amended by 51 Vict., ch. 14, s. 41.—The original section has been repealed and the above substituted in lieu thereof.

Section 10 of 44 Vict. ch. 11 (amending sections 119 and 120 of 40 Vict., ch. 10,) merely provides a procedure to be followed when the Customs department undertakes to deal with questions of penalties and forfeitures, and does not divest the Crown of its right to sue for the same in the manner provided by sections 100 and 101 of 40 Vict., ch. 10, even where departmental proceedings have been commenced under the said provisions of 44 Viet., ch. 11, sec. 10.

Even if sections 100 and 101 of the said Act 40 Vict., ch. 10 had been repealed by the later statute, the Crown could proceed by information *in rem* at common law, and this right could not be taken away except by express words or necessary implication. *The Queen v. 3 casks of alcohol*, 1 Ex. C.R. 99. (June 1883.)

In whose name prosecutions may be brought.

223. All penalties and forfeitures imposed by this Act or by any other Act, relating to the Customs or to trade or navigation, shall, unless other provisions are made for the recovery thereof, be sued for, prosecuted and recovered with costs by Her Majesty's Attorney General of Canada, or in the name or names of the Commissioner of Customs, or any officer or officers of the Customs, or other person or persons thereunto authorized by the Governor in Council, either expressly or by general regulation or order, and by no other person. 46 Viet., ch. 12, s. 189.

How such suits or proceedings may be brought in the Province of Quebec.

224. All penalties or forfeitures imposed by this Act or by any other law relating to the Customs or to trade or navigation, may, in the Province of Quebec, be sued for, prosecuted and recovered with full costs of suit by the same proceeding as any other moneys due to the Crown, and all suits or prosecutions for the recovery thereof shall, in that Province, be heard and determined in like manner as other suits or prosecutions in the same court for moneys due to the Crown, except that in the Circuit Court the same shall be heard and determined in a summary manner; but nothing in this section shall affect any provisions of this Act, except such only as relate to the form of proceeding and of trial in such suits or prosecutions as aforesaid. 46 Viet., ch. 12, s. 190.

Procedure in such suits or prosecutions, in the several Courts.

225. Every prosecution or suit in the Exchequer Court of Canada, or in any superior court or circuit court or court of competent jurisdiction for the recovery or enforcement of any penalty or forfeiture imposed by this Act or by any other law relating to the Customs or to trade or navigation may be commenced, prosecuted and proceeded with in accordance with any rules of practice, general or special, established by the court for Crown suits in revenue matters, or in accordance with the usual practice and procedure of the court in civil cases, in so far as such practice and procedure are applicable, and wherever the same are not applicable, then in accordance with the directions of the court or a judge. 46 Vict., ch. 12, s. 191, *part*.

As to the venue.

226. The venue in any such prosecution or suit may be laid in any county in the Province notwithstanding that the cause of prosecution or suit did not arise in such county. 46 Vict., ch. 12, s. 191, *part*.

Arrest of defendant about to leave the Province where the suit is brought.

227. Any judge of the court in which any prosecution or suit is brought for the recovery or enforcement of any penalty or forfeiture as aforesaid, may, upon being satisfied by affidavit that there is reason to believe that the defendant will leave the Province without satisfying such penalty or forfeiture, issue a warrant under his hand and seal for the arrest and detention of the defendant in the common gaol of the county, district or place until he has given security, before and to the satisfaction of such judge or some other judge of the same court, for the payment of such penalty with costs, in case judgment is given against him. 46 Vict. ch. 12, s. 192.

What shall be sufficient averment.

[**"228.** In any declaration, information, statement of claim or proceeding in any such prosecution or suit, it shall be sufficient to state the penalty or forfeiture incurred, and the Act and section of the Act, or the rule or regulation under which it is alleged to have been incurred, without further particulars; and the averment that the person seizing or suing was and is an officer of the Customs, shall be sufficient *primâ facie* evidence of the fact alleged, and no persons shall be disqualified as a witness by reason of interest."]

As amended by 51 Vict. ch. 14, sec. 42. The original section has been repealed and the above substituted therefor.

Those who sue for the Crown to recover full costs of suit—Penalties and cost, how levied.

229. In every prosecution, information, suit or proceeding

brought under this Act for any penalty or to declare or enforce any forfeiture or upon any bond given under it, or in any matter relating to the Customs or to trade or navigation, Her Majesty, or those who sue for such penalty or forfeiture, or upon such bond, shall, if they recover the same, be entitled also to recover full costs of suit; and all such penalties and costs, if not paid, may be levied on the goods and chattels, lands and tenements of the defendant, in the same manner as sums recovered by judgment of the court in which the prosecution is brought may be levied by execution, or payment thereof may be enforced by *capias ad satisfaciendum* against the person of the defendant under the same conditions and in like manner. 46 Viet., ch. 12, s. 194.

Nolle prosequi by Attorney-General.

230. If, in any case, the Attorney General of Canada is satisfied that the penalty or forfeiture was incurred without intended fraud, he may enter a *nolle prosequi* on such terms as he sees fit, which shall be binding on all parties; and the entry of such *nolle prosequi* shall be reported to the Minister of Customs with the reasons therefor. 46 Viet., ch. 12, s. 195.

Averment as to place at which any act was done.

231. In any prosecution, suit or other proceeding for the recovery of any penalty or in respect of any forfeiture as aforesaid, or for an offence against this Act or any other law relating to the Customs, or to trade or navigation, the averment that the cause of prosecution or suit arose, or that such offence was committed within the limits of any district, county, port or place, shall be sufficient evidence of the fact without proof of such limits, unless the contrary is proved. 46 Viet., ch. 12, s. 196.

Costs and damages for seizure set aside, to be limited on certificate of probable cause.

232. If, in any prosecution, information or suit respecting any seizure made under this Act or any law relating to the Customs, decision or judgment is given for the claimant, and if the judge or court before whom the cause has been tried or brought, certifies that there was probable cause for seizure, the claimant shall not be entitled to any costs of suit, nor shall the person who made such seizure be liable to any action, indictment, or other suit or prosecution on account of such seizure; and if any action, indictment, or other suit or prosecution is brought against any person on account of his making or being concerned in the making of such seizure, the plaintiff, if probable cause is certified as aforesaid, shall not be entitled to more than twenty cents damages or to any costs, nor shall the defendant in such prosecution in such case be fined more than ten cents. 46 Viet., ch. 12, s. 216.

Burden of proof on owner or claimant of goods.

["233. If any prosecution or suit is brought for any penalty or forfeiture under this Act or any other law relating to the Customs or to trade or navigation, and any question arises as to the identity or origin of the goods seized, or as to the payment of the duties on any goods, or as to the lawful importation thereof, or as to the lawful lading or exportation of the same, or as to the doing or omission of any other thing by which such penalty or forfeiture would be incurred or avoided,—the burden of proof shall lie on the owner or claimant of the goods, and not on the Crown, or on the person bringing such prosecution or suit.]

As amended by 51 Vict., ch. 14, sec. 43.—The original section has been repealed and the above substituted therefor.

Forfeiture of articles seized—And of moneys deposited in lieu thereof—Notice of intention to claim—Burden of proof.

["234. All vessels, vehicles, goods and other things seized as forfeited under this Act or any other law relating to Customs, or to trade or navigation, shall be placed in the custody of the nearest collector, and secured by him, or if seized by any officer in charge of a revenue vessel shall be retained on board thereof until her arrival in port, and shall be deemed and taken to be condemned without suit, information or proceedings of any kind, and may be sold; and all moneys paid to or deposited with any officer of Customs in lieu of any things seized, or as the ascertained value of any things liable to seizure and forfeiture, shall likewise be deemed and taken to be condemned, without suit, information or proceedings of any kind; unless the person in whose possession or custody they were seized, or the owner thereof, or the person paying or depositing any moneys as aforesaid, or some person on his behalf, within one month from the day of seizure, payment or deposit gives notice in writing to the seizing officer or other chief officer of the Customs at the nearest port, that he claims or intends to claim the same; and the burden of proof that such notice was duly given in any case shall lie upon the person so claiming."]

As amended by 52 Vict., ch. 14, s. 14.—This section as now in force provides, in addition to the original one, that "all moneys paid to or deposited "with any officer of customs in lieu of any things seized, or as the ascer- "tained value of any things liable to seizure and forfeiture, shall likewise "be deemed and taken to be condemned, without suit, information or "proceedings of any kind,"—unless "the person paying or depositing any "moneys as aforesaid," within one month from the day of the "payment "or deposit" give notice as therein mentioned. *See The Vacuum Oil Co. v. The Queen*, 2 Ex. C.R. 234.

Want of notice not to stay proceedings.

["235. Proceedings for the condemnation of the things seized or any moneys paid or deposited in lieu thereof or as the

ascertained value of things liable to seizure, may be commenced and prosecuted to judgment, whether notice as provided in the next preceding section has or has not been given."]

As amended by 52 Vict., ch. 14, s. 15. This new section, in addition to the original one, makes provision for the case where "moneys have been paid in or deposited in lieu of the things seized or as the ascertained value of the things liable to seizure."

What shall be deemed a commencement of suit.

["**236.** Whenever under any provision of this Act any penalty may be recovered or any forfeiture may be enforced by action, suit or proceeding, the seizure by an officer of Customs or person acting in his aid of the goods in respect of which the penalty has been incurred or the forfeiture has accrued, shall be deemed to be a commencement of such action, suit or proceeding."]

As amended by 51 Vict., ch. 14, sec. 44.—The original section has been repealed and the above substituted in lieu thereof.

237. Repealed by 51 Vict., ch. 14, sec. 49.

As to claims made after proceedings have been commenced.

238. Every person who desires to claim any thing seized after proceedings for condemnation thereof have been commenced shall file his claim in the office of the clerk, registrar or prothonotary of the court; and such claim shall state the name, residence and occupation or calling of the person making it, and shall be accompanied by an affidavit of the claimant or his agent having a knowledge of the facts, setting forth the nature of the claimant's title to the thing seized. 46 Vict., ch. 12, s. 201.

Bond for payment of costs required.

239. Before any such claim can be filed the claimant shall give security to the satisfaction of the court or a judge thereof by bond in a penal sum of not less than two hundred dollars, or by a deposit of money not less than that sum, for the payment of the costs of the proceedings for condemnation. 46 Vict., ch. 12, s. 202.

Limitation of time for bringing suits.

["**240.** All seizures, prosecutions or suits for the recovery or enforcement of any of the penalties or forfeitures imposed by this Act, or any other law relating to the Customs, may be made or commenced at any time within three years after the offence was committed, or the cause of prosecution or suit arose, but not afterwards."]

As amended by 51 Vict., ch. 14, s. 45.—The original section has been repealed and the above substituted therefor.

And from other courts.

242. An appeal shall also lie from the Exchequer Court of Canada, the superior courts and county courts respectively, in cases where the amount of the penalty or forfeiture is such that if a judgment for a like amount was given in any civil case, an appeal would lie; and such appeal shall be allowed and prosecuted on like conditions and subject to like provisions as other appeals from the same court, in matters of like amount; and an appeal shall lie from the Circuit Court to the Court of Queen's Bench in the Province of Quebec, to be allowed and prosecuted in like manner and on like conditions as appeals from the Superior Court in that Province. 46 V., c. 12, s. 209.

If brought by the Crown.

243. If the appeal is brought by Her Majesty's Attorney-General, or a collector or officer of the Customs, it shall not be necessary for him to give any security on such appeal. 46 V., c. 12, s. 210.

Restoration of goods, &c., not prevented by appeal if security is given.

244. In any case in which proceedings have been instituted in any court against any vessel, vehicle, goods or thing, for the recovery or enforcement of any penalty or forfeiture under this Act or any law relating to the Customs, trade or navigation, the execution of any decision or judgment for restoring the thing to the claimant thereof, shall not be suspended by reason of any appeal from such decision or judgment, if the claimant gives sufficient security, approved of by the court or a judge thereof, to render and deliver the thing in question or the full value thereof, to the appellant, in case the decision or judgment so appealed from is reversed. 46 V., c. 12, s. 211.

The Canada Evidence Act, 1893.

56 VICTORIA.

CHAPTER 31.

An Act Respecting Witnesses and Evidence.

[*Assented to 1st April*, 1893.]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title.

1. This Act may be cited as *The Canada Evidence Act*, 1893.

Application.

2. This Act shall apply to all criminal proceedings, and to all civil proceedings and other matters whatsoever respecting which the Parliament of Canada has jurisdiction in this behalf.

WITNESSES.

No incompetency from crime or interest.

3. A person shall not be incompetent to give evidence by reason of interest or crime.

Competency of accused and of wife and husband—Proviso: as to communications during marriage.

4. Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness, whether the person so charged is charged solely or jointly with any other person. Provided, however, that no husband shall be competent to disclose any communication made to him by his wife during their marriage, and no wife shall be competent to disclose any communication made to her by her husband during their marriage.

2. The failure of the person charged, or the wife or husband of such person, to testify, shall not be made the subject of comment by the judge or by counsel for the prosecution in addressing the jury.

Incriminating answers.

5. No person shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any other person: Provided, however, that no evidence so given shall be

used or receivable in evidence against such person in any criminal proceeding thereafter instituted against him other than a prosecution for perjury in giving such evidence.

Evidence of mute.

6. A witness who is unable to speak, may give his evidence in any other manner in which he can make it intelligible.

Judicial notice to be taken of Imperial statutes, etc.

7. Judicial notice shall be taken of all Acts of the Imperial Parliament, of all ordinances made by the Governor in Council, or the Lieutenant-Governor in Council of any province or colony which, or some portion of which, now forms or hereafter may form part of Canada, and of all the Acts of the legislature of any such province or colony, whether enacted before or after the passing of *The British North America Act*, 1867.

Proof of proclamations etc., of Governor-General, etc., —Canada Gazette, etc.—Copy printed by Queen's Printer—Copy or extract duly certified.

8. Evidence of any proclamation, order, regulation or appointment, made or issued by the Governor-General or by the Governor in Council, or by or under the authority of any minister or head of any department of the Governor of Canada, may be given in all or any of the modes hereinafter mentioned, that is to say:—

(*a.*) By the production of a copy of the *Canada Gazette* or a volume of the Acts of the Parliament of Canada purporting to contain a copy of such proclamation, order, regulation or appointment, or a notice thereof;

(*b.*) By the production of a copy of such proclamation, order, regulation or appointment, purporting to be printed by the Queen's Printer for Canada; and—

(*c.*) By the production, in the case of any proclamation, order, regulation or appointment made or issued by the Governor-General or by the Governor in Council, of a copy or extract purporting to be certified to be true by the clerk, or assistant or acting clerk of the Queen's Privy Council for Canada, —and in the case of any order, regulation or appointment made or issued by or under the authority of any such minister or head of a department, by the production of a copy or extract purporting to be certified to be true by the minister, or by his deputy or acting deputy, or by the secretary or acting secretary of the department over which he presides.

Proof of proclamations, &c., of Lieutenant-Governor, &c.—Official Gazette, &c.—Copy printed by Government Printer—Copy of extract duly certified.

9. Evidence of any proclamation, order, regulation or appointment made or issued by a Lieutenant-Governor or Lieutenant-Governor in Council of any province, or by or under

the authority of any member of the Executive Council, being the head of any department of the Government of the province, may be given in all or any of the modes hereinafter mentioned, that is to say:

(*a*.) By the production of a copy of the Official Gazette for the province, purporting to contain a copy of such proclamation, order, regulation or appointment or a notice thereof;

(*b*.) By the production of a copy of such proclamation, order, regulation or appointment, purporting to be printed by the Government or Queen's Printer for the province;

(*c*.) By the production of a copy or extract of such proclamation, order, regulation or appointment, purporting to be certified to be true by the clerk or assistant or acting clerk of the Executive Council, or by the head of any department of the Government of a province, or by his deputy or acting deputy, as the case may be.

Proof of judicial proceedings, etc.

10. Evidence of any proceeding or record whatsoever of, in, or before any Court in the United Kingdom, or the Supreme or Exchequer Courts of Canada, or any court, or before any justice of the peace or any coroner, in any province of Canada, or any court in any British colony or possession, or any court of record of the United States of America, or of any State of the United States of America, or of any other foreign country, may be made in any action or proceeding by an exemplification or certified copy thereof, purporting to be under the seal of such court, or under the hand or seal of such justice or coroner, as the case may be, without any proof of the authenticity of such seal or of the signature of such justice or coroner, or other proof whatever; and if any such court, justice or coroner, has no seal, or so certifies, then by a copy purporting to be certified under the signature of a judge or presiding magistrate of such court or of such justice or coroner, without any proof of the authenticity of such signature or other proof whatsoever.

Proof of Imperial Acts, etc.

11. Imperial proclamations, Orders in Council, treaties, orders, warrants, licenses, certificates, rules, regulations, or other Imperial official records, acts or documents may be proved (*a*) in the same manner as the same may from time to time be provable in any court in England, or (*b*) by the production of a copy of the *Canada Gazette*, or a volume of the Acts of the Parliament of Canada purporting to contain a copy of the same or a notice thereof, or (*c*) by the production of a copy thereof, purporting to be printed by the Queen's Printer for Canada.

Proof of official or public documents.

12. In every case in which the original record could be received in evidence, a copy of any official or public document of Canada or of any province, purporting to be certified under the

hand of the proper officer or person in whose custody such official or public document is placed, or a copy of a document, by-law, rule, regulation or proceeding, or a copy of any entry in any register or other book of any municipal or other Corporation, created by statute or charter of Canada or any province, purporting to be certified under the seal of the corporation, and the hand of the presiding officer, clerk or secretary thereof, shall be receivable in evidence without proof of the seal of the corporation, or of the signature or of the official character of the person or persons appearing to have signed the same, and without further proof thereof.

Copies of public books or documents admissible in evidence.

13. Where a book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, and no other statute exists which renders its contents provable by means of a copy, a copy thereof or extract therefrom shall be admissible in evidence in any court of justice, or before a person having, by law or by consent of parties, authority to hear, receive and examine evidence, provided it is proved that it is a copy or extract purporting to be certified to be true by the officer to whose custody the original has been entrusted.

Proof of hand-writing, etc., not requisite.

14. No proof shall be required of the handwriting or official position of any person certifying, in pursuance of this Act, to the truth of any copy of or extract from any proclamation, order, regulation, appointment, book or other document; and any such copy or extract may be in print or in writing, or partly in print, and partly in writing.

Order signed by Secretary of State.

15. Any order in writing, signed by the Secretary of State of Canada, and purporting to be written by command of the Governor-General, shall be received in evidence as the order of the Governor-General.

Copies of notices, etc., in Canada Gazette.

16. All copies of official and other notices, advertisements and documents printed in the *Canada Gazette* shall be *prima facie* evidence of the originals, and of the contents thereof.

Copies of entries in books of Government departments.

17. A copy of any entry in any book kept in any department of the Government of Canada, shall be received as evidence of such entry and of the matters, transactions and accounts therein recorded, if it is proved by the oath or affidavit of an officer

of such department that such book was, at the time of the making of the entry, one of the ordinary books kept in such department, that the entry was made in the usual and ordinary course of business of such department, and that such copy is a true copy thereof.

Proof of notarial acts in Quebec.

18. Any document purporting to be a copy of a notarial act or instrument made, filed or enregistered in the province of Quebec, and to be certified by a notary or prothonotary to be a true copy of the original in his possession as such notary or prothonotary, shall be received in evidence in the place and stead of the original, and shall have the same force and effect as the original would have if produced and proved: Provided, that it may be proved in rebuttal that there is no such original, or that the copy is not a true copy of the original in some material particular, or that the original is not an instrument of such nature as may by the law of the province of Quebec be taken before a notary or be filed, enrolled or enregistered by a notary in the said province.

Notice to be given to adverse party.

19. No copy of any book or other document as provided in sections ten, twelve, thirteen, fourteen, seventeen and eighteen of this Act, shall be received in evidence upon any trial unless the party intending to produce the same has before the trial given to the party against whom it is intended to be produced reasonable notice of such intention. The reasonableness of the notice shall be determined by the court or judge, but the notice shall not in any case be less than ten days.

Construction of this Act.

20. The provisions of this Act shall be deemed to be in addition to and not in derogation of any powers of proving documents given by any existing statute or existing at law.

Application of Provincial laws of evidence.

21. In all proceedings over which the Parliament of Canada has legislative authority, the laws of evidence in force in the province in which such proceedings are taken, including the laws of proof of service of any warrant, summons, subpœna or other document, shall, subject to the provisions of this and other Acts of the Parliament of Canada, apply to such proceedings.

OATHS AND AFFIRMATIONS.

Who may administer oaths.

22. Every court and judge, and every person having, by law or consent of parties, authority to hear and receive evidence shall have power to administer an oath to every witness who is legally called to give evidence before that court, judge or person.

Affirmation of witness instead of oath.

23. If a person called or desiring to give evidence, objects, on grounds of conscientious scruples, to take an oath or is objected to as incompetent to take an oath, such person may make the following affirmation:—

"I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth."

And upon the person making such solemn affirmation, his evidence shall be taken and have the same effect as if taken under oath.

Affirmation instead of oath—Perjury.

24. If a person required or desiring to make an affidavit or deposition in a proceeding or on an occasion whereon or touching a matter respecting which an oath is required or is lawful, whether on taking office or otherwise, refuses or is unwilling to be sworn, on grounds of conscientious scruples, the court or judge, or other officer or person qualified to take affidavits or depositions, shall permit such person instead of being sworn, to make his solemn affirmation in the words following, viz:—"I, A. B., do solemnly affirm," etc.; which solemn affirmation shall be of the same force and effect as if such person had taken an oath in the usual form.

2. Any witness whose evidence is admitted or who makes an affirmation under this or the next preceding section shall be liable to indictment and punishment for perjury in all respects as if he had been sworn.

Evidence of child—Corroboration required.

25. In any legal proceeding where a child of tender years is tendered as a witness, and such child does not, in the opinion of the judge, justice or other presiding officer, understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if, in the opinion of the judge, justice or other presiding officer, as the case may be, such child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

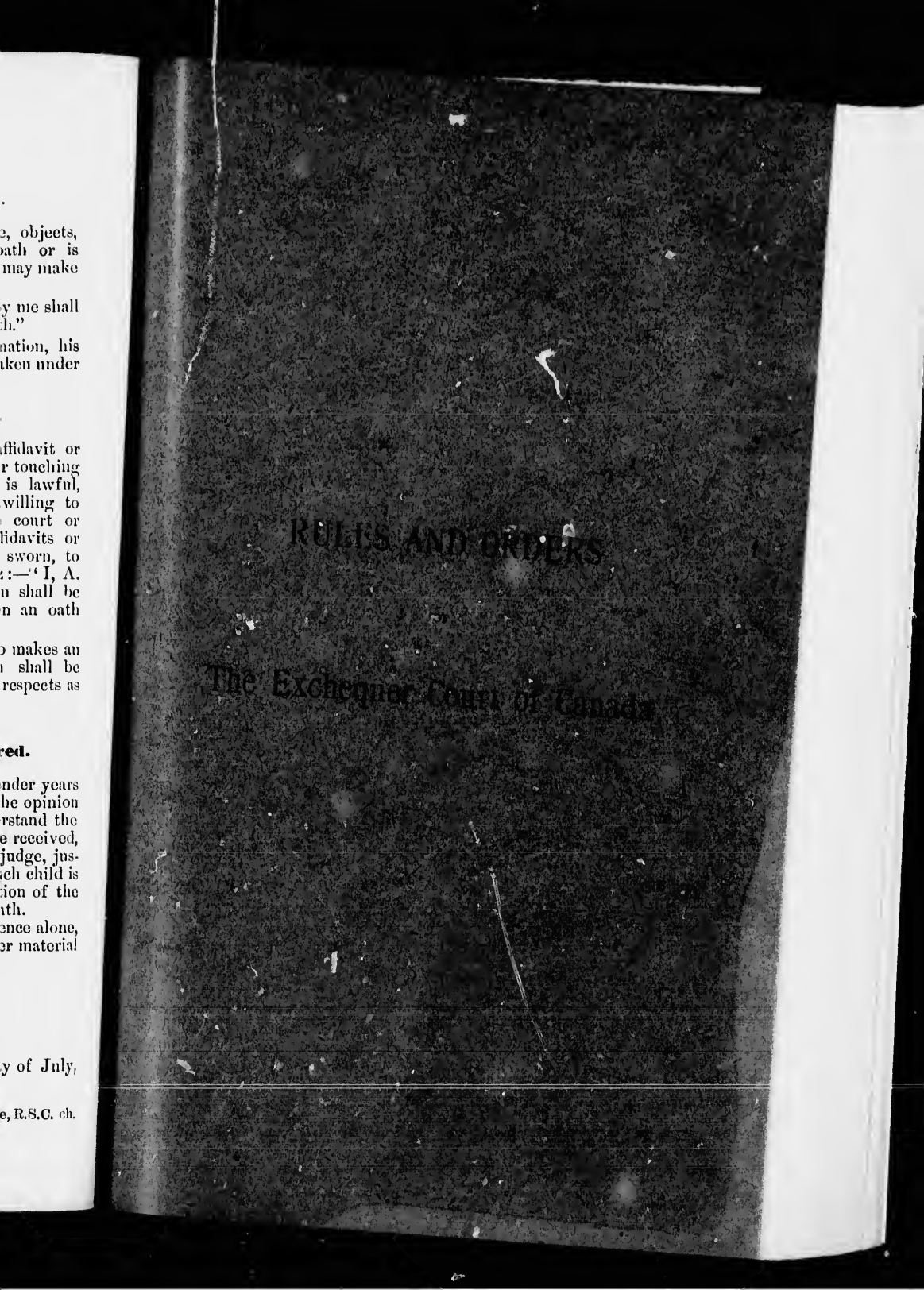
2. But no case shall be decided upon such evidence alone, and such evidence must be corroborated by some other material evidence.

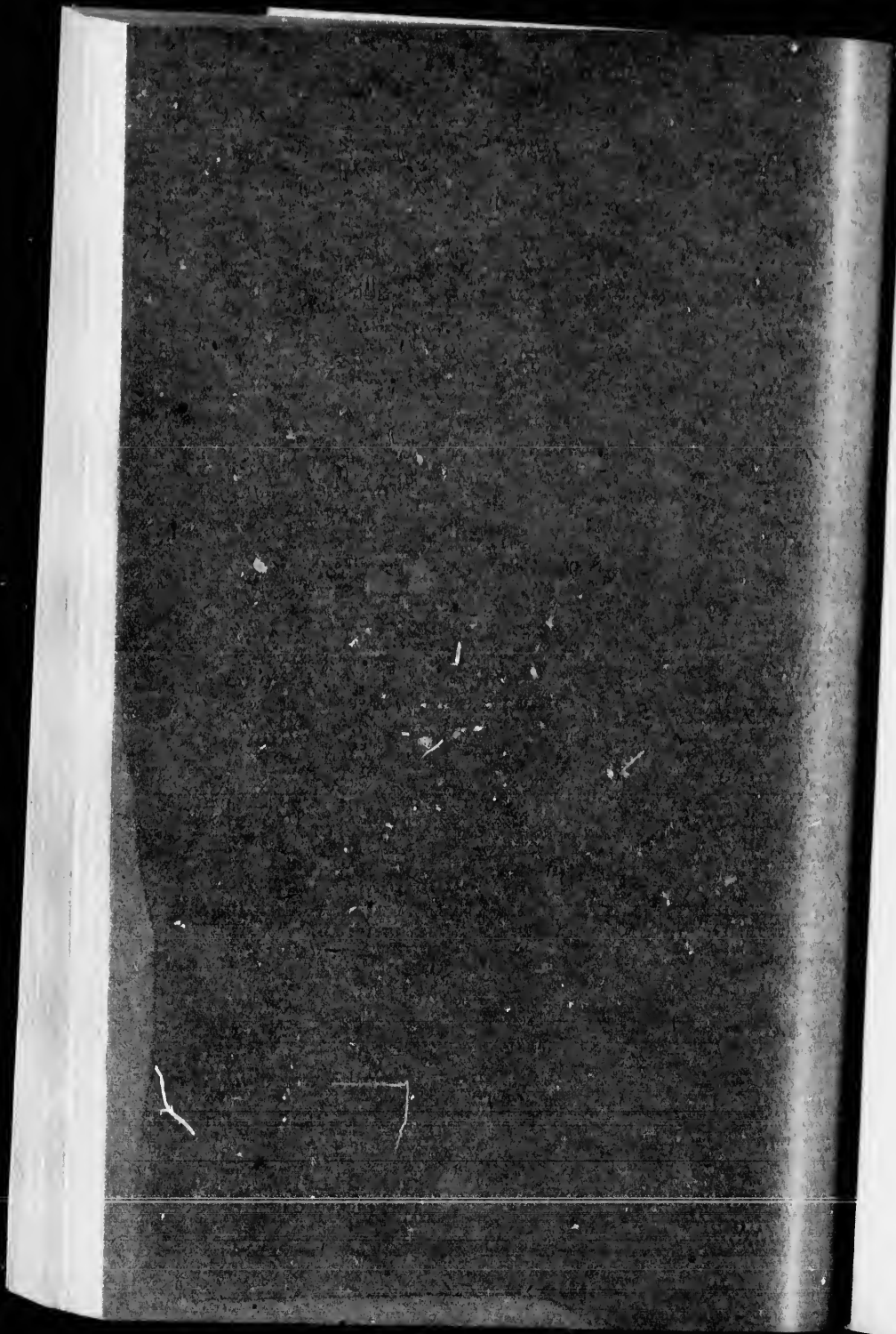
Sections 26, 27 and 28 deal with statutory declarations.

Commencement of Act.

29. This Act shall come into force on the first day of July, one thousand eight hundred and ninety three.

By schedule B. to this chapter, the Act respecting Evidence, R.S.C. ch. 139, is wholly repealed.


RULES AND ORDERS
The Exchequer Court of Canada



Exchequer Court Rules.

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243. How money to be paid out of Court.

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The following Rules in force in the Exchequer Court of Canada, in respect of the matters hereinafter mentioned, have been respectively made in pursuance of the following statutes, viz. :—

1. The Rules of March 4th, 1876, under the provisions contained in the 79th section of 38 Victoria, chapter 11, intituled "*An Act to establish a Supreme Court and a Court of Exchequer for the Dominion of Canada*;" and also under the provisions of the Act 38 Victoria, chapter 12, intituled, "*An Act to provide for the institution of suits against the Crown by petition of right, and respecting procedure in Crown suits.*"

2. The Rules of April 25th, 1876, under the provisions contained in *The Petition of Right Act*, 1876.

3. The Rules of February 28th, 1877, and of February 12th, 1884, under the provisions of *The Petition of Right Act*, 1876, 38 Victoria, chapter 11, and 39 Victoria, chapter 26.

4. The Rules of March 7th, 1888, and of December 15th, 1888, in pursuance of section 55 of 50-51 Victoria, chapter 16.

5. The Rules of January 12th, 1891, in pursuance of section 55 of 50-51 Vict., ch. 16, as amended by 52 Vict., ch. 38.

6. The Rules of November 13th, 1891, in pursuance of section 55 of 50-51 Victoria, chapter 16, as amended by 52 Victoria, chapter 38, and *The Exchequer Court Amendment Act*, 1891 (54-55 Vict., ch. 26).

7. The Rules of December 5th, 1892; February 8th, 1894; and May 1st, 1895, in pursuance of the 55th section of *The Exchequer Court Act* (50-51 Vict., ch. 16) as amended by 52 Vict., ch. 38.

The second and third Rules of the General Order of the 7th day of March, 1888, which were made under the provisions of section 13 of the old expropriation Act, R.S.C. ch. 39, as amended by 50-51 Vict., ch. 17, have been repealed by Rule 38 of the General Order of May 1st, 1895; *The Expropriation Act*, R.S.C. ch. 39, having also been repealed by 52 Vict., ch. 13, which was substituted therefor.

The above mentioned Act, 38 Vict., ch. 11, (1875) has been repealed by, and its provisions in part re-enacted in, chapter 135 of *The Revised Statutes of Canada*, within the meaning of 49 Vict., ch. 1, sec. 8. The Act 38 Vict., ch. 12 (1875) has been repealed and replaced by 39 Vict., ch. 27, (1876) which has itself been subsequently repealed by, and its provisions in part re-enacted in, ch. 136 of *The Revised Statutes of Canada*.

Under section 7, subsection 50 of *The Interpretation Act* it is provided that "Whenever an Act is repealed, wholly or in part, and other "provisions are substituted, all by-laws, orders, regulations, rules and "ordinances made under the repealed Act shall continue good and valid in "so far as they are not inconsistent with the substituted Act, enactment or "provision, until they are annulled or others made in their stead."

Under section 22 of *The Exchequer Court Act* it is also enacted that "all provisions of law, and all rules and orders now regulating the "practice and procedure, including evidence, in the Exchequer Court, "shall, so far as they are consistent with the provisions of this Act, "continue in force until altered under this Act."

GENERAL DISPOSITIONS.

I. RULE I.* (*May 1st, 1895*) (*a.*)

Mode of practice and procedure in cases not provided for by any Act of Parliament or by these rules.

In all suits, actions and matters in the Exchequer Court of Canada, not otherwise provided for by any Act of the Parliament of Canada, or by any general Rule or Order of the Court, the practice and procedure shall :—

(*a.*) If the cause of action arises in any part of Canada other than the Province of Quebec, conform to and be regulated, as near as may be, by the practice and procedure at the time in force in similar suits, actions and matters in Her Majesty's High Court of Justice in England ; and

(*b.*) If the cause of action or suit arises in the Province of Quebec, conform to and be regulated, as near as may be, by the practice and procedure at the time in force in similar suits, actions and matters in Her Majesty's Superior Court for the Province of Quebec ; and if there be no similar suit, action or matter therein, then conform to and be regulated by the practice and procedure at the time in force in similar suits, actions and matters in Her Majesty's High Court of Justice in England.

Rules one and two of the General Order of the 4th day of March, 1876, have been repealed by Rule 1 of the General Order of the 1st day of May, 1895, and the above has been substituted in lieu thereof.

In the Rule, as now in force, the distinction between Revenue and and Common Law cases has been done away with.

By the *Supreme Court of Judicature Act*, 1873, secs. 16 and 31, the Court of Exchequer as a Court of Revenue, as well as a Common Law Court, has been merged in Her Majesty's High Court of Justice in England, and by sec. 18, sub-sec. 4 of the same Act, the jurisdiction and powers of the Court of Exchequer Chamber have been transferred to the Court of Appeal.

In dealing with the law and practice before this Court in cases originating in any of the Provinces of the Dominion, excepting the Province of Quebec, one must read first the Statute ; secondly, these Rules ; thirdly,

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(*a.*) Whenever a Rule is referred to by its number only, it is to be taken as relating to a Rule made and published on the 4th day of March, 1876. Rules subsequently made are mentioned by their number, together with the date between brackets.

The Rules with an asterisk (*) are applicable to suits in which the cause of action has arisen in the Province of Quebec.—(See Rule 293.)

The Rules of Court as now in force are composed of several General Orders. These General Orders were made at different dates and each contains a series of Rules, designated by numbers beginning with "one" and continuing on in arithmetical sequence. Great difficulty has been for that reason experienced in making a satisfactory classification, and to obviate as far as possible such confusion and complexity it was thought advisable for the sake of convenience to give the Rules a separate and consecutive numbering, in heavier figures, to the left of the Rule, for the purpose of reference only.

the Rules of Her Majesty's High Court of Justice in England. For cases in which the cause of action has arisen in the Province of Quebec, one must read first the Statute, secondly, these Rules; thirdly, the practice of Her Majesty's Superior Court for that Province when the Exchequer Court Rules do not apply; and fourthly, the Rules of Her Majesty's High Court of Justice in England when neither these Rules nor the rules of practice for the Superior Court of the Province of Quebec, make provision for the practice and procedure in suits, actions or matters coming within the jurisdiction of the Court.

2. RULE 2.—REPEALED.

This Rule has been repealed by Rule 37 of the General Order of May 1st 1895, and re-enacted as part of Rule 1 now in force

3. RULE 3.*

Rules next following not to apply to certain suits.

The following rules are not to apply to suits in which the cause of action arises in the Province of Quebec, except when expressly so provided.

4. RULE 6.*—(*March 7th*, 1888.)

Matters pending before Official Arbitrators when The Exchequer Court Act came into force.

Unless it is otherwise specially ordered any matter pending before the official arbitrators when the Act first herein mentioned (*a*) came into force which had then been heard or partly heard, or which has since been heard, by them, shall be continued before them as official referees, and their report thereon shall be made to the Court in like manner as if such matter had been by the Court referred to them under the twenty-sixth section of the said Act.

Section 59 of *The Exchequer Court Act* (50-51 Vict., ch. 16) reads as follows, viz:—"All matters pending before such official arbitrators when "this Act comes into force shall be transferred to the Exchequer Court "and may therein be continued to a final decision in like manner as if the "same had in the first instance been referred to the court under the pro- "visions of this Act."

Prior to the making of the above Rule a claim had been referred to the official arbitrators for investigation and award. The enquiry had been proceeded with and heard before two of such arbitrators only, and a report upon the claim duly made by them in favour of the claimant. On motion for judgment by claimant upon such report it was held that the hearing of the claim by two of the official arbitrators only was not a hearing within the meaning of the Rule and that judgment could not be entered on the report. *Rioux v. The Queen*, 2 Ex. C. R. 91.

(a.) The Act referred to here is 50-51 ch. 16.

5. RULE 7. *– (*March 7th*, 1888.)

The 255th rule to apply to preceding rule.

The 255th rule of the Exchequer Court respecting the enlargement or abridgment of time shall apply to the doing of any act or the taking of any proceeding hereunder.

INFORMATIONS IN SUITS BY THE CROWN, PETITIONS OF RIGHT AND STATEMENTS OF CLAIM.

6. RULE 4. *

Suits on behalf of the Crown to be by Information.

All suits on behalf of the Crown in the interest of the Dominion of Canada, which according to the practice of the Exchequer Division of Her Majesty's High Court of Justice in England would be instituted by information, are to be instituted by information filed in the name of the Attorney-General of the Dominion.

We find in Manning's *Exchequer Practice* (page 112) the following definition of an information, viz :—

"An information in the Exchequer is a statement in writing made to "the court of some matter of fact, in general not appearing of record, "whereby it is shown that the King is entitled :

"First, to an adjudication in his favour in respect of the property in "lands or goods which have been taken into his possession, or in respect of "goods to which the Crown is entitled, and which have come into the "hands of the defendant. This is called an information *in rem*, and might "at common law be exhibited, either by the Attorney-General or by the "party making the seizure or discovery.

"Or, secondly, to recover a debt, or satisfaction in damages for some "personal wrong.

"The third species of information demands compensation and security "on account of some injury done to the real property of the Crown. This "corresponds with the real or mixed action of the subject, and is called an "information of intrusion."

From the above will be seen that Informations are of three principal kinds :—1st, the information *in rem* ; 2ndly, the information *in personam* ; and 3rdly, the information of *intrusion*.

The information of *devenerunt* lay also when personal property belonging to the Crown, either by forfeiture or otherwise, had found its way into the hands, or was under the control, of a subject ; this kind of information was, however, always either wholly or partly *in rem*. *Ibid.* p. 165 ; 3 Bl. 261 ; Chitty Prer. 332 ; *The Crown's Suits, etc., Act*, 1865, ss. 31 *et seq.*

There was also a proceeding called an English Information in the Exchequer Division, under the equitable jurisdiction of the Court of Exchequer, so called because it was in the nature of a bill of complaint in equity, which was formerly called an English bill. *Sweet, Law Dictionary*, 429.

The English information is now almost invariably employed by the Crown in cases relating to foreshore. *Moore & Hall On Foreshore*, 644.

For the law and practice upon the subject of English information see *The Crown Suits, etc., Act*, 1865 (28-29 Vict., ch. 104 (U.K.) Part II); *Attorney General v. Halling*, 15 M. & W. 687; *Corporation of London v. Attorney-General*, 4 H. L. C. 100; *Wilson's Judicature Acts*, pp. 128, 509; *Annual Practice*, 1895, p. 244.

The rules regulating procedure in suits by English Information, issued by the Barons of the Exchequer in Easter Term, 1866, in pursuance of *The Crown Suits, etc., Act*, 1865, will be found in L. R. 1 Exchequer, p. 389.

The Attorney-General of Canada may also under 52 Vict., ch. 13 cause an Information to be exhibited in the Exchequer Court of Canada in any case in which land or property is taken and expropriated for the construction of a public work.

For further particulars and forms respecting expropriation proceedings see *ante* p. 149.

7. RULE 5.*

By whom information to be signed.

Every information is to be signed by the Attorney-General of the Dominion, or by some person duly authorized to affix the signature of the said Attorney-General thereto.

8. RULE 6.*

Form of information.

The information is to conclude with a claim for the relief sought, and the commencement and conclusion thereof may be in the form given in Schedule A to these orders.

See Schedule E for form of informations of intrusion; and for forms of informations and pleadings in expropriation cases see notes under sec. 25 of *The Expropriation Act*, *ante* p. 149.

For endorsement on information or statement of claim hereinbefore mentioned, see Schedule C.

9 RULE 7.*—(*December 15th*, 1888.)

Joinder of proceedings in rem and in personam.

Where by the commission of any offence, any thing is liable to condemnation, and the offender is also liable to a penalty, such condemnation and penalty may be enforced and recovered in one and the same proceeding, but no judgment for any such penalty shall be given against any person who has not been served with the information, or made a claim to such thing as hereinbefore provided, or otherwise been made or become a party to such proceeding.

10. RULE 45.*—(*May 1st*, 1895.)

Joinder of causes of action in information of intrusion.

Proceedings to recover profits or damages for intrusion may

be joined to proceedings to remove persons intruding upon the Queen's possession of lands or premises.

1. *Venue.*—In an information of *intrusion* the venue may be laid in any district. *Attorney-General v. Dockstader*, 5 U. C. R. (O. S.) 311.

2. *Appropriate remedy in information of intrusion.*—An order directing a defendant to recover the land is not an appropriate part of the remedy to be given upon an information of intrusion. *The Queen v. Farwell*, 3 Ex. C. R. 271.

11. RULE 7.*

How suits other than by information, petition of right and reference are to be instituted.

Suits in the said court other than suits by the Attorney General or by the Crown, by Petitions of Right and References from the head of any department of the Government of Canada are to be instituted by filing a statement of claim which may be according to the form given in Schedule B to these Orders, and which shall conform to the rules of pleading hereinafter prescribed, and to the system and mode of pleading from time to time in force in Her Majesty's High Court of Justice in England.

As amended by Rule 3 of the General Order of May 1st, 1895.

This Rule originally contemplated only the class of cases in which suits could be brought for Her Majesty in the name of one of Her officers under the provisions of special statutes; such as, for instance, the case of the Postmaster-General, who, under subsection (m) of section 9 and subsection 2 of section 116 of chapter 35 of *The Revised Statutes of Canada*, is authorized and empowered to sue for, and recover, in his name, all sums of money due for debt, postage or for penalties under the said Act. Similar provisions are also made under special statutes, with respect to the Minister of Finance and the Minister of the Interior. It also covered the cases in the nature of *qui tam* actions. A form of statement of claim in *qui tam* actions will be found in schedule E hereto. (a.)

The Rule as now amended covers as well the class of cases above mentioned as also the cases between subject and subject coming within the jurisdiction of the court in respect of Patents of Invention, Copyrights, Trade-marks and Industrial Designs or the like, and where it is provided that an action is to be instituted by statement of claim.

This Rule has been made applicable to the Province of Quebec and no action can now be instituted before this court by writ of summons.

PATENTS OF INVENTION, COPYRIGHTS, TRADE-MARKS AND INDUSTRIAL DESIGNS.

12. RULE 1.*—(*Nov. 13th*, 1891.)

Practice of Court to apply to proceedings under The Exchequer Court Amendment Act, 1891.

The process, practice, pleadings, times for taking proceedings, forms and modes of procedure prescribed by the General Rules

(a). For *qui-tam* actions, see sub-sec. (a) of sec. 17 of 50-51 Vict., ch. 16; Baxter's Jud. Act, 485-6 & App. A. (10) for forms, and Arts, 5716 to 5719 of R. S. Q.

and Orders of the Exchequer Court of Canada of the fourth of March, 1876, and by subsequent General Rules and Orders of the said Court shall apply to any action, suit, matter or proceeding that may be had or taken in the said Court under or by virtue of *The Exchequer Court Amendment Act*, 1891, and such General Rules and Orders shall, notwithstanding any exception or limitation contained therein, apply as well to cases in which the cause of action arises in the Province of Quebec as to other cases.

13. RULE 2.*—(*Nov.* 13*th*, 1891.)

When practice not provided for by these rules, recourse to be had to English Rules.

Subject to such General Rules and Orders, the practice and procedure from time to time in force in Her Majesty's High Court of Justice in England in respect of like actions, suits, matters or proceedings shall apply to any action, suit, matter or proceeding that may be had or taken in the Exchequer Court of Canada under or by virtue of *The Exchequer Court Amendment Act*, 1891.

The foregoing Rules 1 and 2 of the General Order of November 13th, 1891, were made with the object of providing for the practice and procedure necessitated by the new jurisdiction conferred upon the Exchequer Court in respect of Patents of Invention, Copyrights, Trade-Marks and Industrial Designs. See Rule 11.

Particulars.—The rule of practice established in patent cases by *Edison Telephone Co. v. India Rubber Co.*, 17 Ch. D. 137, to the effect that where a defendant asks to amend his particulars of objection, he can only be allowed to do so on the terms of the plaintiff having the right to elect to discontinue his action, the defendant paying the costs subsequent to the delivery of his first particulars,—applies also to actions to restrain the infringement of copyright designs. See North, J., in *Morris v. Coventry Machinist Co.*, [1891] 3, Ch. 418.

Particulars in action for infringement of patent—Application by defendant.—Where, in an action for the infringement of a patent for a process of incandescent lighting, the defendant applied for an order for the delivery by plaintiff of particulars of infringement, the Judge confined the order to particulars of the times and places of the alleged acts of infringements, declining to order particulars of the nature of such acts.—*Auer Incandescent Light Mfg. Co v. O'Brien*. May 22nd, 1895.

SCIRE-FACIAS.

14. RULE 1.*—(*December 5th*, 1892.)

In proceedings for impeachment of patents of invention English practice prior to 46-47 Vict., ch. 57 (U. K.) shall be followed.

In any proceeding for the impeachment of any patent under the 34th section of *The Patent Act*, as amended by the Act

53 Victoria, chapter 13, intituled *An Act to amend the Patent Act*, the practice and procedure which in like proceedings were in force in Her Majesty's High Court of Justice in England immediately prior to the passing of the Act of the Parliament of the United Kingdom of Great Britain and Ireland, 46 and 47 Victoria, chapter 57, intituled *An Act to amend and consolidate the Law relating to Patents for Invention, Registration of Designs and Trade-marks*, shall be followed as near as may be.

15. RULE 2.*—(*December 5th*, 1892.)

General grounds for impeachment of patents of invention.

In any such proceeding the party seeking to impeach the patent may, in addition to any ground or cause for impeachment that might be relied on under the 34th section of the said Act, set up and rely upon any ground or cause mentioned in the 37th section of *The Patent Act*, as amended by the Act 55-56 Victoria, chapter 24, intituled *An Act to further amend the Patent Act*.

16. RULE 3. *—(*December 5th*, 1892.)

Provisions where patent sought to be impeached under sec. 37 of the Patent Act.

If in any case it is sought to impeach a patent for one or more of the grounds or causes mentioned in section 37 of *The Patent Act* as amended by 55-56 Victoria, chapter 24, intituled *An Act to further amend the Patent Act*, and for no other cause, a sealed and certified copy of the patent and of the petition, affidavit, specification and drawings thereunto relating may be filed in the office of the Registrar of the Court, and proceedings to have the same declared null and void may thereupon be taken by information in the name of the Attorney-General of Canada, or by a statement of claim at the suit of any person interested in accordance with the ordinary practice of the Court.

The foregoing rules 1, 2 and 3 of the General Order of the 5th day of December 1892, were made with the object of providing for the practice and procedure in respect of proceedings by *scire facias* in Patent cases under sections 34 (as amended by 53 Vict., ch. 13,) and 37 (as amended by 55-56 Vict., ch. 24,) of "*The Patent Act.*"

1. *Costs in Sci.-fa. cases.*—Where in a *Sci.-fa.* case, judgment went for the defendant in the following words:—"I find all the issues raised by the "pleadings in this case in favour of the defendant, for whom there will be "judgment with costs," it was on taxation contended, under the practice now in force in virtue of the General Order of December 5th, 1892, and 15-16 Vict., ch. 83, sec. 43 (U.K.) that the costs should be taxed as between attorney and client.—Ruled by the Registrar that as such General Order provided that the practice therein mentioned "shall be followed as near as may be," it meant only so far as applicable and that as there was no provi-

sion to tax costs between solicitor and client in the Exchequer Court, such costs should be taxed as between party and party. (*Boak v. Merchants Marine Insurance Co.*, Cassels' Digest, 2nd Edn. 677 ; and *Bossé v. Paradis*, 21 Can. S.C.R. 419, referred to). On appeal to the Judge—held that the appeal should be dismissed, first on the ground mentioned by the Registrar, and secondly, because section 43 of ch. 83, 15-16 Vict. (U.K.) did not apply to the present case, but merely to a case where an action for infringment of letters patent had been first taken before a Superior Court and where the Judge thereof had then certified on the record that the validity of the letters patent in the declaration mentioned had come in question and that afterwards the record with such certificate had been given in evidence upon a case by *Scire facias* to repeal the said letters patent. *The Queen v. Laforce*, January 27th, 1894

2. *Right to begin.*—At the trial of an action by *Scire Facias* the Defendant will be entitled to begin, and if any evidence is adduced on behalf of the relator, the defendant will be entitled to reply. General Order of December 5th, 1892 and 15-16 Vict., ch. 83, sec. 41 (U.K.) cited in support. *The Queen v. Fane et al*, October 6th 1893.

3. *Right to begin.*—Under the General Order of the Exchequer Court of Canada, bearing date the 5th December, 1892, and the provisions of sec. 41 of 15-16 Vict. (U.K.) ch 83, the defendant in an action of *Scire Facias* to repeal a patent for invention is entitled to begin and give evidence in support of his patent, and if the plaintiff produces evidence to impeach the same, the defendant is entitled to reply. *The Queen v. Laforce*, 4 Ex.C R. 15.

The practice in proceedings by *Scire Facias* to impeach a patent of invention having become to some extent obsolete, the following forms of pleadings in such cases may be found convenient :—

DECLARATION.

(*Title of Cause.*)

Dominion of Canada, }
To wit : }

" Our Lady the Queen sent to Her Sheriff of the County of Carleton, or any other of Her Sheriffs in the Dominion of Canada, Her writ clothed in these words :—

(*The writ of Sci. fa. is here recited.*)

WRIT OF SCIRE FACIAS.

(*Title of Cause.*)

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

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

GREETING :

" Whereas we lately by our letters patent sealed with the seal of our patent office in the City of Ottawa, in our Dominion of Canada, and signed by the Honourable , our Commissioner of Patents and one of our Privy Council for Canada, and bearing date the second day of December,

A.D. 1891, and registered in our said patent office at Ottawa aforesaid as No. 37,890, reciting, that whereas E.L., (*residence and occupation*) had petitioned the Commissioner of Patents praying for the grant of a patent for an alleged new and useful improvement in pneumatic tires (he having assigned to the said P.L. (*residence and occupation*) all his right, title and interest in and to the said invention,) a description of which invention is contained in the specification of which a duplicate is thereunto attached and made an essential part thereof, and had elected his domicile at the said City of , in Canada, and had also complied with the other requirements of *The Patent Act*, ch. 61 of *The Revised Statutes of Canada*, did by our said letters patent grant to the said P. L., her executors, administrators, legal representatives and assigns for the period of fifteen years from the date thereof, the exclusive right, privilege and liberty of making, constructing and using and vending to others to be used in our Dominion of Canada the said invention, and in which said letters patent, amongst other provisoes and conditions therein expressed, it was and is provided that the grant thereby made should be subject to adjudication before any court of competent jurisdiction and should be subject to the conditions contained in the thirty-seventh and other sections of the Act aforesaid.

"And whereas we lately by our letters patent, sealed and signed as aforesaid and bearing date the first day of June, A.D. 1892, and registered in our said Patent Office at Ottawa as No. 39,035, reciting, amongst other things, that whereas J. of the City of Chicago, in the State of Illinois, in the United States of America, cycle manufacturer, had petitioned the said Commissioner of Patents praying for the grant of a patent for alleged new and useful improvements in pneumatic tires, a description of which invention is contained in the specification of which a duplicate is thereunto attached and made an essential part thereof, and had elected his domicile at Ottawa, Ontario, and had also complied with the other provisions of the said Patent Act, did by our said last mentioned letters patent grant to the said J., his executors, administrators, legal representatives and assigns, for the period of fifteen years from the date thereof, the exclusive right, privilege and liberty of making, constructing and using, and vending to others to be used in the Dominion of Canada, the said invention of him, the said J.

"And whereas the said J. being desirous, for the reasons hereinafter mentioned, to impeach the first recited letters patent bearing date the second day of December, A.D. 1891, granted to the said P. L. as aforesaid, has obtained a sealed and certified copy thereof, and of the petition, affidavit, specification and drawings relating thereto, and has, in accordance with the provisions in that behalf contained in the said Act and the Acts amending the same, filed the said sealed and certified copies of said letters patent, petition, affidavit, specification and drawings, in the office of the Registrar of our Exchequer Court of Canada, and the said letters patent and documents aforesaid are now of record in the said Court.

"And whereas we are given to understand that our said letters patent bearing date the second day of December, A.D. 1891, and numbered 37,890, issued to the said P. L. as aforesaid, were and are contrary to the law in this, that whereas the said L. did in the said petition state that he had invented a certain new and useful improvement in pneumatic tires not known or used by others before his invention thereof, as set forth in the said specification and drawings accompanying said petition (being the specification and drawings attached to said letters patent No. 37,890).

"And whereas the said L. in the said affidavit did swear that he verily believed that he was the inventor of the alleged new and useful improvement in pneumatic tires described and claimed in the said specification, and did swear that the several allegations contained in the said petition were respectively true and correct

"And whereas we are given to understand and be informed that the said L. did not invent the said alleged invention in the said petition and letters patent No. 37,890 mentioned and claimed.

"And also that the said L. was not the true and first inventor of the said alleged invention of an improvement in pneumatic tires in said letters patent No. 37,890 mentioned and claimed, but that the said J. was the true and first inventor.

"And also that the specification to said letters patent No. 37,890 granted to the said P. L. as aforesaid, does not correctly and fully describe the nature of the invention claimed to be patented thereby.

"And also that the specification to said letters patent No. 37,890, granted to the said P. L. as aforesaid, does not correctly describe the mode or modes of operating the said alleged invention in said letters patent No. 37,890 mentioned and claimed.

"And also that no person from the reading of said specification, or from perusing and studying the same, would be able to manufacture and construct the said alleged invention so as to make the same useful, and that with the sole aid of the said specification and without assistance from the patentee and directions and information other than that contained in the said letters patent, the article attempted to be patented could not be manufactured.

"And also that the said specification does not fully explain the principle and the several modes in which it is intended to apply and work out the said alleged invention.

"And also that said specification does not state clearly and distinctly the contrivances and things which are thereby claimed as new, and for the use of which the said P. L. claims an exclusive property and privilege

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

And we, being willing that what is just in the premises should be done, command you our sheriff of our said county of Carleton or other our said Sheriffs that by good and lawful men of your bailiwick you give notice to the said P. L. that before us, in our said Exchequer Court of Canada, she be and appear within ten days from the service upon her of such notice and of a copy of this writ, inclusive of the day of such service, to show if she has or knows anything to say for herself why the said letters patent No. 37,890 as aforesaid, so granted to her ought not, for the reasons aforesaid, be adjudged to be void, vacated, cancelled and disallowed, and further to do and receive those things which our said court shall consider right in that behalf, and that you then return and have there the names of those persons by whom you shall have caused such notice to be given to the said Permelie La Force, of this writ, together with this writ immediately after the execution thereof.

"Witness the Honourable George W. Burbidge, Judge of the Exchequer Court of Canada, at Ottawa, the day of in the year of Our Lord one thousand eight hundred and ninety- and in the fifty- year of our reign.

L. A. A.,
Registrar.

"Whereupon on this present day, that is to say on the eleventh day of February, A.D. 1893, the Sheriff of the City of Toronto returned to our said Lady the Queen in Her Exchequer Court of Canada that by C. D. and E. F. good and lawful men of his bailiwick, he had given notice to the said P. L., as he the said Sheriff was by the said writ commanded and thereupon the said P. L., by Messrs. G. H., her solicitors, comes; whereupon Sir John Sparrow David Thompson, Knight Commander of the most Honourable Order of St. Michael and St. George, Attorney-General of the Dominion of Canada, solicitor of our said Lady the Queen, who for our said Lady the Queen prosecutes in this behalf, being present here in court in his own proper person, prays that the said letters patent No. 37,890 may be adjudged to be void, vacated, cancelled, and disallowed upon the grounds in said writ mentioned and also upon the further ground that the said invention, as comprised in said letters patent No. 37,890 as patented, was not, at the time of the alleged invention thereof and is not, of any use, benefit or advantage to the public.

Delivered, &c.,

PARTICULARS OF OBJECTIONS.

(Title of Cause.)

"The following are the particulars of the objections upon which the plaintiff will rely at the trial of this action with respect to the validity of the letters patent No. 37,890, granted to the defendant and in question herein:—

"1. That L. did not invent the said alleged invention comprised in said letters patent No. 37,890, inasmuch as the said alleged invention had been invented by others prior to his invention thereof, particularly by said J. in the writ of *scire facias* herein mentioned.

"2. That the said L. was not the true and first inventor of the alleged invention comprised in letters patent No. 37,890, inasmuch as the said alleged invention had been invented prior to his invention thereof, by the said J. who was and is the true and first inventor thereof.

"3. That the said alleged invention comprised in said letters patent No. 37,890, as patented, was not at the time of the alleged invention thereof and is not of any use, benefit or advantage to the public.

"4. That the specifications and drawings annexed to said letters patent and dated the 30th of August, 1891, do not correctly and fully describe the nature of the said alleged invention, or the mode or modes of operating the same, inasmuch as the said specification does not describe in what manner or by what means the strips mentioned therein are to be attached to the said covering mentioned therein, or whether the said strips are to meet in the centre of the felloe or otherwise, or whether the inflatable rubber tube is required to be larger or smaller in diameter than the said outer covering, or how or in what manner the said rubber tube is to be inflated, and in other respects the said specifications are insufficient, ambiguous and misleading, so that an ordinary skilled artisan reading the said specification could not, with the sole aid thereof, and without directions and information other than that contained in the said patent, manufacture the said alleged invention; and further, that the said specifications do not state clearly and distinctly the contrivances and things claimed as new, and for the use of which the patentee claims an exclusive property and privilege in the said alleged invention.

"Delivered, &c.

PLEAS.

(*Title of Cause.*)

"The day of , in the year of Our Lord one thousand eight hundred and ninety .

"1. And the said P. L., by her solicitors, G. H., as to the first suggestion in the writ of *scire facias* issued, herein contained, whereby it is suggested and alleged that L., in the said writ named, did not invent the said invention in the said writ mentioned, says that the said L. did invent the said invention, and that the several allegations contained in the petition and affidavit filed by the said L., referred to in the said writ, were respectively true and correct.

"2. And as to the second suggestion in the said writ contained, whereby it is suggested and alleged that the said L. was not the true and first inventor of the said alleged invention, but that one J. was the true and first inventor thereof, the defendant, P. L. says that the said L. was the true and first inventor of the said invention, and that the said J. was not the true and first inventor thereof.

"3. And as to the third suggestion in the said writ contained, whereby it is suggested and alleged that the specification to the said letters patent granted to the said P. L. does not correctly and fully describe the nature of the invention claimed to be patented thereby, the defendant, P. L., says that the said specification does correctly and fully describe the nature of the said invention.

"4. As to the fourth suggestion in the said writ contained, whereby it is suggested and alleged that the specification does not correctly describe the mode or modes of operating the said invention in the said letters patent mentioned and claimed, the defendant, P. L. says that the said specification does correctly describe the mode or modes of operating the said invention.

"5. And as to the fifth suggestion in the said writ contained, whereby it is suggested and alleged that no person, from reading the said specification and from perusing and studying the same, would be able to construct the said invention so as to make the same useful, and that with the sole aid of the said specification and without assistance from the patentee, and instruction and information other than that contained in the said letters patent, the article attempted to be patented could not be manufactured, the said P. L. says that any person, with the sole aid of the said specification and without assistance from the patentee, and without instruction and information other than that contained in the said letters patent, could easily manufacture the article thereby patented.

"6. And as to the sixth suggestion in the said writ contained, whereby it is suggested and alleged that the said specification does not fully explain the principle and the several modes in which it is intended to apply and work out the said invention, the said P. L. says that the said specification fully explains the principle and the several modes in which it is intended to apply and work out the said invention.

"7. And as to the seventh suggestion in the said writ contained, whereby it is suggested and alleged that the said specification does not clearly and distinctly state the contrivances and things which are thereby claimed as new, and for the use of which the said P. L. claims an exclusive privilege and property, the said P. L. says that the said specification does clearly and distinctly state the contrivances and things which are thereby claimed as new, and for the use of which she claims such exclusive privilege and property."

Delivered, etc.

JOINDER OF ISSUE.

(*Title of Cause.*)

The day of in the year of Our Lord one thousand eight hundred and ninety .

And the said Sir John Sparrow David Thompson, who for Our said Lady the Queen prosecutes as aforesaid, for Our said Lady the Queen joins issue upon the defendant's pleas and every of them.

Delivered, etc.

REFERENCE OF CLAIM BY HEAD OF DEPARTMENT.

17. RULE 1.*—(*March 7th*, 1888.)

When reference made, statement of claim to be filed by claimant.

Whenever a claim is referred to the Court by the Head of any Department of the Government of Canada, the claimant shall file with the Registrar a statement of his claim, and shall leave at the office of Her Majesty's Attorney-General of Canada, a copy thereof with an endorsement thereon in the form "CC" in the schedule hereto, and the pleadings and procedure subsequent thereto shall be regulated by and conform, as near as may be, to the mode of pleading and procedure in proceedings against the Crown by petition of right.

As amended in pursuance of Rule 39 of the General Order of the 1st day of May, 1895, by calling the form of indorsement hereinbefore referred to "Form CC" in lieu of "Form A," because of the existence of another "Form A" under the General Order of the 4th of March, 1876.

Rules 2 and 3 of the General Order of 7th March, 1888, respecting expropriation matters under ch. 39 of *The Revised Statutes of Canada*, as amended by 50-51 Vict. ch. 17, have been repealed by Rule 38 of the General Order of the 1st day of May, 1895.

Provision is now made, under section 25 and *seq.* of *The Expropriation Act* (52 Vict., ch. 13) for the institution of actions in expropriation matters by information in the name of the Attorney-General for the Dominion of Canada.

REFERENCES UNDER THE 182ND AND 183RD SECTIONS OF "THE CUSTOMS ACT."

18. RULE 1.*—(*Dec. 15th*, 1888.)

Customs reference, to be heard without pleadings, etc.

Every reference to the Court of any matter in pursuance of the 182nd section of the *The Customs Act* shall be heard without

pleadings, unless the Judge otherwise directs, but any question of law arising upon any such reference may, as in other cases, be stated in the form of a special case for the opinion of the court.

19. RULE 2.*—(*Dec. 15th*, 1888.)

When ripe for trial.

Every such matter shall be deemed ripe for hearing as soon as the reference of the Minister of Customs, and the papers and evidence referred, are filed with the Registrar of the Court.

See *ante*, p. 183 for sections 182 and 183 of *The Customs Act*.

20. RULE 8.*

Petition of right to be signed by counsel.

Every petition of right is to be signed by Counsel for the petitioner, as provided for by the statute applicable thereto.

See rule 291.

EXTENTS.

21. RULE 46.*—(*May 1st*, 1895.)

Writs of immediate extent and diem clausit extremum may issue on affidavit of debt and danger and debt and death.

A commission to find a debt due to the Crown shall not be necessary for authorizing the issue of an immediate Extent or a writ of Diem Clausit Extremum; and an immediate Extent may be issued on an affidavit of debt and danger, and a writ of Diem Clausit Extremum may be issued on an affidavit of debt and death, and, in either case, on the *fiat* of the Judge of the Exchequer Court of Canada. (For forms of affidavit, order and writ, see schedule Y hereto.) 28-29 Viet. (U.K.) ch. 104, sec. 47 and following.

22. RULE 47.*—(*May 1st*, 1895.)

Sheriffs Executing extents need not enquire by the oaths of Jurors.

The Sheriff in executing a writ of immediate Extent or a writ of Diem Clausit Extremum need not enquire by the oaths of good and lawful men in his bailiwick, but shall execute the said writ or writs in the same manner as is provided for the execution of writs of *Fieri-Facias*, against goods and lands, or of Sequestration.

A writ of Extent will only issue for a debt due to the Crown, and while it will issue for Customs-duties mentioned in sections 7 and 8 of *The Customs Act*, as amended by 51 Vict., ch. 11, it will be refused for penalties and forfeitures under section 192 of the said Act. *The Queen v. Boyd*, October 13th, 1893.

DISPENSING WITH PLEADINGS.

23. RULE 2.*—(*February 8th*, 1894.)

Dispensing with pleadings by consent in cases instituted by reference.

Whenever a claim is referred to the court by the Head of any Department of the Government of Canada, a consent in writing signed by the parties or their attorneys that such claim shall be heard without pleadings, may be filed with the Registrar, and shall thereupon become an order of court.

24. RULE 3.*—(*February 8th*, 1894.)

Order to dispense with pleadings.

The court may, on the application of any party, order that any such claim shall be heard without pleadings.

25. RULE 4.*—(*February 8th*, 1894.)

Order to be taken out.

Every such claim shall be ripe for hearing as soon as such order is taken out.

The order must be taken out in the class of cases provided for as well in Rule 2 as in Rule 3 hereinabove mentioned.

PRINTING PLEADINGS.

26. RULE 9.*

What pleadings to be written and what printed.

Every pleading which shall contain less than three folios of one hundred words each (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading shall be printed.

E. O. xix. R. 5.

27. RULE 10.*

How to be printed.

Pleadings and other proceedings required to be printed, shall be printed on paper of good quality, in small pica type leaded, with an inner margin about three-quarters of an inch wide, and an outer margin about two and a half inches wide.

Rules regulating procedure in suits by English information. (L.R. 1 Ex. 889.)

28. RULE 11.*

Written copies may be filed in case of urgency.

In any case which may appear to the Registrar to be one of urgency he may permit a written copy of a pleading to be filed, upon the party so filing the same giving a written undertaking to file a printed copy within *five days* thereafter.

29. RULE 12.*

Printed copy to be furnished opposite party.

The party printing any pleading or other proceeding shall, on demand in writing, furnish to any other party, his Attorney or Solicitor, any number of printed copies, not exceeding ten, upon payment therefor at the rate of five cents per folio for one copy, and three cents per folio for every other copy.

SERVICE OF INFORMATION, STATEMENT OF CLAIM OR PETITION.

30. RULE 13.*

Petitions of Right, how to be served.

Petitions of Right are to be left at the office of Her Majesty's Attorney-General, and served as prescribed by the statute in such case made and provided.

See "*The Petition of Right Act*" and the forms in the schedules at the end of the Act, *ante* pp. 131, 136.

31. RULE 14.*

Office copy of information or statement of claim to be served, and how to be endorsed.

In suits instituted by information or by filing a statement of claim no writ or process to appear, plead or answer shall issue, but an office copy of the information, or statement of claim duly certified by the Registrar, shall be served on the Defendant, with an endorsement thereon in the form or to the effect set forth in Schedule C to these orders appended.

A notice of motion may be served along with the information, petition of right, or statement of claim under the provisions of Rule 251.

It was thought of some convenience to offer a form of affidavit of service of an office copy of information, which, *mutatis mutandis*, could also be used for the service of statements of claim and petitions of right.

AFFIDAVIT OF SERVICE OF OFFICE COPY OF INFORMATION.

In the Exchequer Court of Canada.

Between

The Queen on the information of the Attorney-General for the Dominion of Canada,

Plaintiff;

and

C. D.,

Defendant.

I, of in the County of and Province of make oath and say:—

1. I did on the day of A.D. 189 , personally serve the above named defendant with a paper which purported to be an Office Copy of the Information filed in this cause in this Honourable Court on the day of A. D., 189 , by delivering to and leaving the said Office Copy with the said defendant That annexed hereto marked A is a copy of the said information.

2. I further say, that the said Office Copy purported to be authenticated by the signature of L. A. A. Registrar of the said Court, and was stamped with the seal of the said Court.

3. I further certify that upon the said Office Copy at the time of the service thereof there was endorsed the following memorandum:

Notice to the Defendant within named.

Your are required to file with the Registrar of the Exchequer Court of Canada, at his office, at the City of Ottawa, your plea, answer, exception or demurrer, or otherwise make your defence to the within information or statement of claim (*as the case may be*) within one month from the service hereof. If you fail to file your plea, answer, exception or demurrer or otherwise make your defence within the time above limited you are to be subject to have such judgment, decree or order made against you as the Court may think just upon the informant's (or plaintiff's) own showing, and if this Notice is served upon you personally you will not be entitled to any further notice of the further proceedings in the cause.

NOTE.—This information (*or* statement of claim) is filed by A.B. etc., Her Majesty's Attorney-General for the Dominion of Canada, on behalf of Her Majesty (*or* by of Solicitor for the within named plaintiff.)

A. B.

Solicitor for the Attorney-General.

4. And, I further say, that to effect such service, I necessarily travelled miles.

Sworn before me at in the county and Province of this day of A. D 189 .

C. D.

A Commissioner for taking affidavits in and for the Province of

32. RULE 15.*

Service to be personal.

Service upon a defendant of an office copy of the information or statement of claim is to be effected personally, except in the cases hereinafter otherwise provided for; but it shall not be necessary to produce the original information or statement of claim at the time of service.

33. RULE 16.*

Service upon a Corporation.

Service of an Information, Statement of claim or Petition of Right, writ, summons, or other process, notice, proceeding or document required to be served within the jurisdiction of the Court upon a Corporation aggregate is to be effected by personal service of an office copy thereof on the Warden, Reeve, Mayor, or Clerk in case of a Municipal Corporation, or on the President, Manager or other head officer, or the Cashier, Treasurer or Secretary at the head office, or at any branch or agency in the Dominion of Canada, or on any other person discharging the like duties, in the case of any other corporation.

Taylor's C. Chy. O. 91.

As amended by the General Order of the 12th day of February, 1881. The original rule has been amended by inserting after the words "Petition of Right" where they first occur therein the words "writ, summons, or other process, notice, proceeding or document required to be served."

34. RULE 17.*

Service upon partners.

When partners are sued in respect of any partnership liability, the information, statement of claim or petition of right may be served either upon any one or more of the partners, or at the principal place (within the jurisdiction) of the business of the partnership upon any person having at the time of service the control or management of the partnership businesss there; and such service shall be deemed good service upon all the partners composing the firm.

E. O. ix., R. 3.

SUBSTITUTIONAL SERVICE.

35. RULE 18.*

Substitutional Service.

If it be made to appear to the Court or to a Judge, that from any cause prompt personal service cannot be effected, the Court or Judge may make such order for substituted, or other service, as may seem just.

SERVICE ON PARTICULAR DEFENDANTS.

36. RULE 19.*

On husband and wife.

When husband and wife are both defendants, service on the husband shall be deemed good service on the wife, but the Court or a Judge may order that the wife shall be served with or without service on the husband.

E. O. ix., R. 2.

37. RULE 20.*

On Infant.

When an infant is defendant to an information, statement of claim or petition of right, service on his or her father or guardian or tutor, or, if none, then upon the person with whom the infant resides, or under whose care he or she is, shall, unless the Court or a Judge otherwise orders, be deemed good service on the infant; provided that the Court or a Judge may order that service made or to be made on the infant shall be deemed good service.

E. O. ix., R. 4.

38. RULE 21.*

On Lunatic.

When a lunatic, so found by inquisition, or (in the Province of Quebec) a lunatic or person of unsound mind, or one who, for other causes, has been judicially interdicted, or subjected to judicial advisers, is a defendant to any suit, service of the information, petition of right or statement of claim on the committee of the lunatic, the curator of the interdicted person, or any one of the judicial advisers shall be deemed good service.

39. RULE 22.*

On Lunatic not interdicted, &c.

When a person of unsound mind, not so found by inquisition or judicially interdicted, or subjected to judicial advisers, is a defendant to any suit, service of the information, petition of right or statement of claim on the person with whom the person of unsound mind resides, or under whose care he or she is, shall, unless the Court or a Judge otherwise orders, be deemed good service on such defendant.

E. O. ix., R. 5.

PROCEEDINGS *IN REM*.

40. RULE 3.*—(*December 15th*, 1888.)

Service of information in proceedings in rem.

In any proceeding *in rem* for the condemnation of any thing,

the information shall be served by posting up one copy thereof in the office of the Registrar of the Court, and by taking one of the following steps, that is to say:—

(*a.*) If such thing is in the custody of any Collector of Customs, or of Inland Revenue, or other officer or person for the Crown, one copy of such information shall be posted up in the office of such collector, officer or person, as the case may be, and another copy thereof;

(1) On the door or some conspicuous part of the warehouse or building in which such thing is stored or kept; or,

(2) In the case of a vessel, railway carriage, car, or other thing not so stored or kept, on some conspicuous part thereof;

(*b.*) If such thing has been delivered up to the owner or any person for him a copy of the information shall be served upon such owner or person in like manner as in other cases;

(*c.*) If such thing has been sold under any law authorizing such sale, a copy of the information shall be posted up in the office of the collector, officer, or person in whose custody the same was at the time of such sale.

41. RULE 4.*—(*December 15th*, 1888.)

Service of information in proceedings in rem in cases not provided for in preceding rule.

In any case not provided for in the rule next preceding the Judge may make such order for service as to him seems just.

42. RULE 5.*—(*December 15th*, 1888.)

When person, after commencement of proceedings for condemnation of the rem, desires to claim the same.

Every person who, after proceedings for the condemnation of any such thing have been commenced, desires to claim the same shall—

(*a.*) Give security to the satisfaction of the Judge by a bond in a penal sum of not less than two hundred dollars, or by a deposit of a sum of money not less than such amount, for the payment of the costs of the proceedings for condemnation; and

(*b.*) File a statement of his claim with the Registrar of the Court, and serve a copy thereof upon Her Majesty's Attorney-General of Canada, and such statement of claim shall disclose the name, residence, and occupation or calling of the person making it, and be accompanied by an affidavit of the claimant, or of his agent having knowledge of the facts, setting forth the nature of the claimant's title to such thing.

43. RULE 6.*—(*December 15th*, 1888.)

In default of security judgment may be obtained.

If within one month after the service of the information security for costs is not given and a claim made, as hereinbefore

mentioned, the Attorney-General may set down the action on motion for judgment, and such judgment shall be given upon the information as the Court considers the Attorney-General entitled to.

SERVICE OUT OF JURISDICTION.

44. RULE 23.*

Service out of jurisdiction.

When a defendant is out of the jurisdiction of the court, then upon application, supported by affidavit or other evidence stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, the court or a judge may order that a notice of the Information, Petition of Right or Statement of Claim be served on the defendant in such place or country or within such limits as the court or a judge thinks fit to direct, and the order is, in such case, to limit a time (depending on the place of service) within which the defendant is to file his statement in defence, plea, answer, exception or demurrer or otherwise make his defence according to the practice applicable to the particular case, or obtain from the court or a judge further time to do so.

E. O. xi., *Wilson's Judicature Act*, p. 151. See Rule 119.

As amended by Rule 4 of the General Order of May 1st, 1895.—The original rule has been amended by substituting for the service on a defendant out of the jurisdiction of the court, a notice of the information, petition of right or statement of claim, in lieu of an office copy thereof as formerly provided for.

FORMS IN CONNECTION WITH RULE 23

No. 1.

Order for service out of jurisdiction.

(*Style of Cause* (*Short*).)

Upon hearing.....and upon reading the affidavit of..... .. .., filed on the.....day of..... ....18...., and... ...., I do order that the plaintiff,.....be at liberty to issue a notice of the ... .(Information, Statement of Claim or Petition of Right, *as the case may be*) for service out of the jurisdiction against.... .....; and I further order that the time within which the said defendant is to file his statement in defence, plea, answer, exception or demurrer or otherwise make his defence according to the practice applicable to this case, be within.....days after the service thereof, and the costs of this application be.....

Dated at.....this.....day of.....A.D. 18..

No. 2.

Notice in lieu of service to be given out of the jurisdiction.

(*Style of Cause* (*Full*).)

To G. H. of.. .....

Take notice that A. B., of.....has commenced an action against you, G. H., in the Exchequer Court of Canada, by an Information (Petition of Right *or* Statement of Claim, *as the case may be*), filed in the said court on the.....day of.....A.D. 18.., which said Information (Petition of Right *or* Statement of Claim, *as the case may be*) reads as follows:—(*Recite here the office copy of the Information, Petition of Right or Statement of Claim, as the case may be, duly certified by the Registrar as provided by Rule* 14 (31)), and you are hereby required within.....days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action by causing a statement in defence, plea, answer, exception or demurrer, to this action or otherwise make your defence according to the practice applicable to this case, and in default of you so doing, the said A. B. may proceed therein, and judgment may be given in your absence.

(Signed), L. M.,
Solicitor.

ADVERTISEMENT IN CASE OF A DEFENDANT NOT TO BE FOUND.

45. RULE 24.*

Service by advertisement.

In case it appears to the court or a judge by sufficient evidence that a defendant cannot be found, after due and diligent search, to be served with an office copy of the information, petition of right or statement of claim the court or a judge may order the defendant to file his plea, answer, demurrer, exception, or otherwise make his defence according to the procedure applicable to the case, within a time to be limited in the order, and may direct a copy of the order together with a notice to the effect set forth in Schedule D to these orders appended, to be published in such manner as the court or judge thinks fit; and in case the defendant does not file any plea, answer, demurrer, or exception, or otherwise make his defence within the time limited by such order, the court or judge, upon proof that advertisements have been duly published according to the requirements of the order, may direct that the case shall thereafter proceed as though the defendant had filed a plea, answer, or defence traversing and denying the allegations contained in the information, petition of right or statement of claim, and the action shall thereafter proceed accordingly

Taylor's C. Chy. O. 100.

46. RULE 25.*

Judge may also order copy of information, etc., and order to be mailed.

In any case provided for by the last preceding order, the court or a judge may in addition to the advertisement therein mentioned, direct that an office copy of the information, petition of right or statement of claim, and a copy of the order shall be forthwith mailed, with the postage prepaid, to the address of the defendant, at such place as the court or a judge may direct, in which case proof by affidavit, of due compliance with such requirement, shall be produced before any order is made permitting the plaintiff to proceed as provided for by the next preceding order.

NO APPEARANCE REQUIRED—PLEADINGS.

47. RULE 26.*

No appearance required—How pleadings are to be filed.

No appearance to any information, petition of right, or statement of claim shall be required; but a defendant who is served with an information, petition of right or statement of claim, shall file his statement in answer, demurrer or other defence to the information, petition of right or statement of claim, conformably to the procedure and mode of pleading hereby provided for as the first step in his defence.

As amended by Rule 5 of the General Order of May 1st, 1895.—The original rule has been amended by making it applicable to petitions of right as well as to informations and statements of claim).

See Rule 73.

48. RULE 27.*

Time for filing statement in defence—answer or demurrer.

The statement in defence, answer or demurrer shall be filed within four weeks after the service of the information, or statement of claim or within such further extended time as the court or a judge may order.

As amended by Rule 6 of the General Order of May 1st, 1895.—The original rule provided that the service of the defence, etc., should be made within one month, if the defendant resided in either of the Provinces of Ontario, Quebec, Nova Scotia, New Brunswick or Prince Edward Island,—and within two months if residing in Manitoba or British Columbia. In view of the easy railway communication now existing in Canada between the several provinces, the above distinction has been done away with and a uniform rule resorted to.

FORM OF PLEADING IN PETITIONS OF RIGHT.

49. RULE 28.

Petition of Right, Pleadings in.

In suits by Petition of Right the pleadings subsequent to the Petition shall be regulated by and conform to the procedure and mode of pleading hereinafter prescribed.

See Rule 294.

50. RULE 29.*

Attorney-General to file plea, etc., within twenty-eight days.

The Attorney-General is to file his statement in defence, demurrer, or other defence to a Petition of Right within *twenty-eight days* after an office copy of the Petition, with the endorsement thereon required by the statute in that behalf made, shall have been left at his office in the City of Ottawa.

See Rule 294.

By *The Petition of Right Act*, sec. 6, the Attorney-General is to file his statement in defence, demurrer, or other defence, within *four weeks* after service of such office copy. See *ante* p. 131.

PLEADING GENERALLY.

51. RULE 30.

The pleadings in actions in the said Exchequer Court shall conform as nearly as may be to the forms and system now in use in Her Majesty's High Court of Justice in England. Excepting as regards cases in which the cause of action shall have arisen in the Province of Quebec.

52. RULE 31.

The following rules not to apply to certain cases.

The following rules of pleading shall apply to all cases in the said Court excepting those in which the cause of action shall have arisen in the Province of Quebec.

1. *Exception à la forme, Arts* 52 *and* 116, *C. C. P. L. C., and Arts* 1498 *and* 1571, *C. C. L. C.*—Where the cause of action had arisen in the Province of Quebec, the Crown pleaded to a petition of right by demurrer, *défense au fonds en droit*, alleging (1) that the description of the limits and position of the property claimed in such petition was insufficient in law; (2) that the conclusions of the petition were insufficient and vague; (3) that in so far as respects the rents, issues and profits, there had been no signification to the Government of the gifts or transfers made by certain heirs to the suppliant. These demurrers were dismissed and it was held

that the objections taken should have been pleaded by *exception à la forme* pursuant to Art 116, C. C. P., and as the demurrer was to all the rents, issues and profits indiscriminately, its conclusion was too large and the demurrer should be dismissed. *Cherrier v. The Queen*, 1 Ex. C. R. 350.

53. RULE 32.

All pleadings to be concise statements of material facts, but not of evidence.

Every pleading shall contain as concisely as may be a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved, such statement being divided into paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of Counsel shall not be necessary, except as regards informations, petitions of right and statement of claim. Forms similar to those in Schedule E. hereto may be used.

E. O. xix., R 4.

1. *Qui tam actions.*—For *qui tam* actions in the Province of Quebec, see Arts 5716 to 5719 of R. S. Q.

2. *Plea of set-off against the Crown.*—Where the dealings of the parties under a contract were so continuous and inseparable that the claims on one side could not properly be investigated apart from those of the other, the rule forbidding a subject to plead set-off against the Crown did not apply. *The Queen v. Whitehead*, 1 Ex. C. R. 135.

3. *Forbearance to sue.*—A promise of forbearance to sue cannot be successfully pleaded in bar of an action between subject and subject, nor would such a defence be available against the Crown. *Ibid.*

4. *Particulars.*—Where in his petition the suppliant alleged in general terms that the injuries he received in an accident on a Government railway in the Province of Quebec resulted from the negligence of the servants of the Crown in charge of the train, and from defects in the construction of the railway, an order was made for the delivery to the respondent of particulars of such negligence and defects. *Dubé v. The Queen*, 2 Ex. C. R. 381.

5. *Counter-claim or incidental demand.*—A substantive cause of action cannot be pleaded as an incidental demand or counter-claim to an information by the Crown. *The Queen v. The Montreal Woollen Mill Company*, 4 Ex. C. R. 348.

54. RULE 33.

A copy of every pleading to be served on opposite party.

Every pleading is to be filed, and a copy thereof is to be served on the opposite party or on his Attorney or Solicitor, if he has one, or left at the office of the Attorney-General as the case may be.

55. RULE 34.

How pleadings to be dated and entitled.

Every pleading shall on its face be entitled of the day and year on which it is filed, and shall also be entitled in the cause.

56. RULE 35.

No plea or defence to be pleaded in abatement.

No plea of defence shall be pleaded in abatement.
E. O. xix. R. 13.

57. RULE 36.

When an allegation of fact in a pleading is to be taken as admitted.

Every allegation of fact in any pleading in an action, not being an information, petition of right or statement of claim, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, person of unsound mind not so found by inquisition, or other person judicially incapacitated.
E. O. xix. R. 17.

58. RULE 37.

Every party must allege all facts on which he means to rely—and all grounds of defence and reply which might take opposite party by surprise, or raise new issues.

Each party in any pleading, not being an information, petition of right, or statement of claim must allege all such facts not appearing in the previous pleadings as he means to rely on, and must raise all such grounds of defence or reply, as the case may be, as if not raised on the pleadings would be likely to take the opposite party by surprise, or would raise new issues of fact not arising out of the pleadings.
E. O. xix. R. 18.

59. RULE 38.

No pleading to be inconsistent with previous pleadings of same party.

No pleading, not being an information, petition of right or statement of claim shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.
E. O. xix. R. 19.

60. RULE 39.

Allegations of fact must not be denied generally.

It shall not be sufficient for a defendant in his defence to deny generally the facts alleged by the information, petition of right or statement of claim, but he must deal specifically with each allegation of fact of which he does not admit the truth.

E. O. xix. R. 20.

61. RULE 40.

Issue may be joined on defence or any pleading subsequent to reply—Effect of joinder of issue.

The Attorney-General petitioner of plaintiff by his reply may join issue upon the defence, and each party in his pleading, if any, subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

E. O. xix. R. 21. See Rule 76.

62. RULE 41.

Allegations not to be denied evasively.

When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. And when a matter of fact is alleged with divers circumstances, it shall not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given.

E. O. xix. R. 22.

63. RULE 42.

Sufficient to state effect of document.

Whenever the contents of any document are material it shall be sufficient in any pleading to state the effect thereof as briefly as possible without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

E. O. xix. R. 24.

64. RULE 43.

Sufficient to allege notice as a fact.

Whenever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact unless the form or precise terms of such notice be material.

E. O. xix. R. 26.

65. RULE 44.

Sufficient to allege contract arising from letters or conversations as a fact—and contracts arising therefrom may be stated in the alternative.

Wherever any contract, or any relations between any persons, does not arise from an express agreement, but is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances, without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one, as to be implied from such circumstances, he may state the same in the alternative.

E. O. xix. R. 27.

66. RULE 45.

Not necessary for party to allege matters of fact which law presumes in his favour.

Neither party need in any pleading allege any matter of fact which the law presumes in his favour, or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied.

E. O. xix R. 28.

PLEADING MATTERS ARISING PENDING THE ACTION.

67. RULE 46.

Pleading matters arising pending the action, by defendant before delivering defence or time for its delivery expired.

Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his so doing has expired, may be pleaded by the defendant in his statement of defence, either alone or together with other grounds of defence.

E. O. xx. R. 1.

68. RULE 47.

After delivery of defence or time for its delivery expired.

Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, within *fourteen days* after such ground of defence has arisen, and by leave of the Court or a Judge, deliver a further defence setting forth the same

E. O. xx. R. 2.

69. RULE 48.

On confessing defence arising after commencement of action plaintiff may sign judgment for costs.

Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last rule mentioned alleges any ground of defence which has arisen after the commencement of the action, the Attorney-General, petitioner or plaintiff may deliver an admission of such defence, which admission may be in the form in Schedule F hereto, with such variations as circumstances may require, and he may thereupon sign judgment for his costs up to the time of the pleading of such defence unless the Court or a Judge shall either before or after the delivery of such admission, otherwise order.

E. O. XX. R. 3.

OFFER TO SUFFER JUDGMENT BY DEFAULT.

70. RULE 40.*—(*May 1st*, 1895.)

Offer by defendant to suffer Judgment for specific amount.

If the defendant in any action files in the office of the Registrar an offer and consent in writing, signed by himself or his attorney of record, to suffer judgment by default, and that judgment shall be rendered against him for a sum by him specified in the said writing, the same shall be entered of record, together with the time at which it was tendered, and the plaintiff or his attorney may at any time within fifteen days after he has received notice of such offer and consent, file a memorandum in writing of his acceptance of judgment for the sum so offered, and judgment may be signed accordingly with costs; or, if after such notice, the Judge, for good cause, grants the plaintiff a further time to elect, then the latter may signify his acceptance as aforesaid at any time before the expiration of the time so allowed, and judgment may be rendered upon such acceptance as if the acceptance had been within fifteen days as aforesaid.

Con. S. N. B. 255.

71. RULE 41.* (*May 1st*, 1895.)

Effect of offer as to costs.

If in the final disposition of any such action, wherein such offer and consent have been made by the defendant, the plaintiff does not recover a larger sum than the one so offered, not including interest from the date of such offer, the defendant, whatever the result of the action, shall be entitled to his costs by him incurred after the date of such offer.

Con. S. N. B. 256.

72. RULE 42.*—(*May 1st*, 1895.)

Such offer or consent, if not accepted, shall not be evidence against the party making the same.

No such offer or consent made as above mentioned, which has not been accepted, shall be evidence against the party making the same, either in any subsequent proceeding in the action in which such offer is made, or in any other action or suit.

Con. S. N. B. 256.

The above Rules 40, 41 and 42 are new and were introduced by the General Order of May 1st, 1895.

STATEMENT IN DEFENCE.

73. RULE 49.

First pleading to be called "Statement in defence," when to be filed.

The first pleading by a defendant is to be termed the statement in defence, and it shall be filed within the time hereinbefore or by the said Petition of Rights Act prescribed, and a copy of it shall also be served as hereinbefore provided for pleadings generally.

See Rules 47, 48 and 50.

For form of statement in defence in expropriation cases, see notes under sec. 25 of *The Expropriation Act*, *ante p.* 151. See also Schedule E.

DISCONTINUANCE.

74. RULE 50.

Discontinuance.

The Attorney-General, petitioner or plaintiff may, at any time before receipt of the defendant's statement in defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay the defendant's costs of the action, or, if the action be not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this Rule otherwise provided, it shall not be competent for the Attorney-General, petitioner or plaintiff to withdraw the Record or discontinue the action without leave of the Court or a Judge, but the Court or a Judge may, before or at or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise as may seem fit, order the action to be discontinued, or any part

of the alleged cause of complaint to be struck out. The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave.

REPLY AND SUBSEQUENT PLEADINGS.

75. RULE 51.

The reply.

The pleading of the Attorney-General, petitioner or plaintiff, in answer to the defence shall be called the reply.

For form of reply see Schedule E.

76. RULE 52.

When to be filed and served.

The Attorney-General, petitioner or plaintiff shall file and serve his reply, if any, within *one month* after the defence or the last of the defences shall have been served unless the time shall be extended by the Court or a Judge.

E. O. xxiv. R. 1. See Rules 61, 108.

77. RULE 53.

No pleading subsequent to reply except joinder, without order of judge.

No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a Judge, and then upon such terms as the Court or Judge shall think fit.

E. O. xxiv. R. 2.

78. RULE 54.

Time for delivery of pleadings subsequent to reply.

Subject to the last preceding Rule, every pleading subsequent to reply shall be filed and served within *two weeks* after the service of the previous pleading, unless the time shall be extended by the Court or a Judge.

79. RULE 55.

Close of pleadings.

As soon as either party has joined issue upon any pleading of the opposite party simply without adding any further or other pleading thereto, the pleadings as between such parties shall be deemed to be closed.

E. O. xxv.

ISSUES.

80. RULE 56.

Issues.

Where in an action it appears to a Judge that the pleadings do not sufficiently define the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall if the parties differ, be settled by the Judge.

E. O. xxvi.

AMENDMENTS.

81. RULE 57.*

Amendment of pleadings.

The Court or a Judge may at any stage of the proceedings allow either party to alter his information, petition of right, statement of claim, defence or reply, or may order to be struck out or amended any matter in such pleadings or statements respectively which may be impertinent or irrelevant, or which may tend to prejudice, embarrass or delay the fair trial of the action, and all such amendments shall be made as may be necessary for the purpose of determining the real question or questions in controversy between the parties

E. O. xxvii. R. 1.

82. RULE 58.*

Attorney-General or petitioner may amend any time before filing of defence.

The Attorney-General Petitioner or Plaintiff may, upon præcipe and without any leave, amend the information, petition of right or statement of claim at any time before the filing of a defence, and also once after defence filed before the expiration of the time limited for reply, and before replying.

E. O. xxvii. R. 2.

As amended by Rule 7 of the General Order of May 1st, 1895.

* The original rule has been amended by inserting after the words "Plaintiff may" in the second line thereof, the words "upon præcipe and."

83. RULE 59.*

Opposite party may apply to disallow amendment.

Where any party has amended his pleading under the last preceding Rule, the opposite party may within *two weeks* after the delivery to him of the amended pleading, apply to the Court or a Judge to disallow the amendment or any part thereof, and the Court or Judge may, if satisfied that the justice of the case requires it, disallow the same.

E. O. xxvii. R. 4.

84. RULE 60.*

On Amendment by one party, other party may apply for leave to plead or amend.

Where any party has amended his pleading under Rule 58 the other party may apply to the Court or a Judge for leave to plead anew or to amend his former pleading within such time and upon such terms as may seem just.

E. O. xxvii. R. 5.

85. RULE 61.*

Further powers of amendment.

In addition to the foregoing powers of amendment, at any time during the progress of any action, suit or other proceeding in the said Exchequer Court, the Court or a Judge may, upon the application of any of the parties, and whether the necessity of the required amendment shall or shall not be occasioned by the error, act, default or neglect of the party applying to amend, or without any such application, make all such amendments as may seem necessary for the advancement of justice, the prevention and redress of fraud, the determining of the rights and interests of the respective parties and the real question in controversy, and best calculated to secure the giving of judgment according to the very right and justice of the case, and all such amendments shall be made upon such terms, as to payment of costs or otherwise, as to the Court or Judge ordering the same to be made shall seem meet.

86. RULE 62.*

If amendment not made within time limited order for amendment to become void.

If a party who has obtained an order for leave to amend a pleading delivered by him does not amend the same within the time limited for that purpose by the order, or if no time is thereby limited, then within *two weeks* from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such *two weeks*, as the case may be, become *ipso facto* void, unless the time is extended by the Court or Judge.

E. O. xxvii. R. 7.

87. RULE 63.*

How pleadings may be amended.

A pleading may be amended by written alterations in the pleading which has been filed, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 100 words in any one case, or are so numerous or of such a nature that the making them in writing would render the pleading difficult or inconvenient to read, in either of which cases the amendment must be made by filing a print as amended.

E. O. xxvii. R. 8. For amendment of writs see Rule 270.

88. RULE 64.*

Amended pleadings to be marked with date of order under which amendment made.

Whenever any pleading is amended, such pleading when amended shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz, "Amended..... .....day of....."

E. O. xxvii. R. 9.

89. RULE 65.*

When amended pleading to be served.

Whenever a pleading is amended, such amended pleading shall be served on the opposite party within the time allowed for amending the same.

E. O. xxvii. R. 10.

DEMURRERS.

90. RULE 66.

Demurrers.

Any party may demur to any pleading of the opposite party or to any part of a pleading setting up a distinct cause of action, ground of defence, or reply, or as the case may be, on the ground that the facts therein do not show any cause of action, ground of defence, or reply, as the case may be, to which effect can be given by the Court as against the party demurring.

E. O. xxviii. R. 1. See Rule 138.

91. RULE 67.

Form of.

A demurrer shall state specifically whether it is to the whole or to a part, and if so to what part of the pleading of the opposite party. It shall state grounds in law for the demurrer. A demurrer may be in the form in Schedule G hereto. If there is no ground or only a frivolous ground of demurrer stated, the Court or a Judge may set aside such demurrer with costs.

E. O. xxviii. R. 2.

92. RULE 68.

When to be filed and served.

A demurrer shall be filed and served in the same manner and within the same time as any other pleading in the same stage of the action.

E. O. xxviii. R. 3.

93. RULE 69.

Demurrer and defence to be in one pleading.

A defendant desiring to demur to part of a statement of claim and to put in a defence to the other part shall combine such demurrer and defence in one pleading. And so in every case where a party entitled to put in a further pleading desires to demur to part of the last pleading of the opposite party, he shall combine such demurrer and other pleading.

E. O. xxviii. R. 4.

94. RULE 70.

Attorney-General may demur and plead without leave.

The Attorney-General may demur and plead to the same pleading or part of a pleading without any leave being requisite to entitle him so to do.

95. RULE 71.

Leave to plead and demur to be obtained.

If a party other than the Attorney-General desires to be at liberty to plead as well as to demur to the same matter, he may apply to the Court or a Judge for an order giving him leave to do so, and the Court or Judge, if satisfied that there is reasonable ground for the demurrer, may make an order accordingly, or may reserve leave to him to plead after the demurrer is overruled, or may make such other order and upon such terms as may be just.

E. O. xxviii. R. 5.

96. RULE 72.

Setting down demurrer for argument.

When a demurrer either to the whole or part of a pleading is filed and served, either party may set down the demurrer for argument immediately, and the party so setting down such demurrer for argument, shall on the same day give notice thereof to the other party. If the demurrer shall not be set down, and notice thereof given within *ten days* after service, and if the party whose pleading is demurred to does not within such time serve an order for leave to amend, the demurrer shall be held sufficient for the same purposes and with the same results as to costs as if it had been allowed on argument.

E. O. xxviii. R. 6.

97. RULE 73.

While demurrer pending no pleading to be amended.

While a demurrer to the whole or any part of a pleading is pending such pleading shall not be amended unless by order of the Court or Judge, and no such order shall be made except on payment of the costs of the demurrer.

E. O. xxviii. R. 7.

98. RULE 74.

When demurrer to whole of petition, information, or statement allowed, costs of action to be paid.

If a demurrer to the whole of an Information, Petition of Right or Statement of Claim be allowed, the Crown, Petitioner or Plaintiff, as the case may be, subject to the power of the Court to allow an amendment, shall pay to the demurring defendant the costs of the action, unless the Court shall otherwise order.

E. O. xxviii. R. 9.

As amended by Rule 8 of the General Order of May 1st, 1895. The original rule has been amended by substituting for the words "the statement of claim to be amended" in the fourth line thereof, the following words "an amendment."

99. RULE 75.

When demurrer to pleading or any part pleading allowed matter demurred to to be deemed struck out of pleadings.

Where a demurrer to any pleading or part of a pleading is allowed in any case not falling within the last preceding Rule, then (subject to the power of the Court to allow an amendment) the matter demurred to shall as between the parties to the demurrer be deemed to be struck out of the pleadings, and the rights of the parties shall be the same as if it had not been pleaded.

E. O. xxviii. R. 10.

100. RULE 76.

Costs when demurrer overruled.

Where a demurrer is overruled the demurring party shall pay to the opposite party the costs occasioned by the demurrer, unless the Court shall otherwise direct.

E. O. xxviii. R. 11.

101. RULE 77.

When demurrer overruled Court may allow demurring party to plead.

Where a demurrer is overruled the Court may make such order and upon such terms as to the Court shall seem right for allowing the demurring party to raise by pleading any case he may be desirous to set up in opposition to the matter demurred to.

E. O. xxviii. R. 12.

102. RULE 78.*

Form of setting down demurrer for argument.

A demurrer shall be set down for argument by delivering to the proper officer a præcipe in the Form in Schedule H.
E. O. xxviii. R. 13.

103. RULE 79.*

Notice of argument of, when to be served.

Notice of argument of a demurrer is to be served at least *eight clear days* before the argument.

DEFAULT OF PLEADING.

104. RULE 80.*

When default in pleading, action may be set down on motion for judgment.

If the Defendant makes default in delivering a defence or demurrer the Attorney-General or Plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the information, or statement of claim the Court shall consider the Attorney General or Plaintiff to be entitled to.
E. O. xxix. R. 10.

105. RULE 81.*

When one of several defendants makes default.

Where there are several Defendants, then, if one of such Defendants make such default as aforesaid, the Attorney-General or Plaintiff may either set down the action at once on motion for judgment against the Defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other Defendants.
E. O. xxix. R. 11.

106 RULE 4. *—(*March 7th*, 1888.)

Motion for judgment by default.

A motion for judgment by default, pursuant to rules 80 or 81 of the Exchequer Court, may be made *ex parte* if a copy of the information or statement of claim with an endorsement as provided by Rule 14 of the Exchequer Court is served personally upon the defendant.

107. RULE 82.*

Default by Attorney-General.

In case the Attorney-General makes default in filing any pleading in any action or proceeding within the prescribed time,

the plaintiff may apply to the Court or a Judge on motion for an order that the action be taken as confessed, or for an order giving him liberty to proceed as if the Attorney-General had filed a statement in answer, traversing or denying the case made, and upon either of such orders being made, the case may thenceforth proceed accordingly.

As amended by Rule 9 of the General Order of May 1st, 1895. The effect of this amendment has been to make the new rule more general and to strike therefrom such portion of its provisions as related to the repealed Petition of Right Act of 1875.

For cases of failure to plead on behalf of the Crown see Clode *On Petition of Right*, p. 182.

See Rule 253.

108. RULE 83.*

Default in replying or demurring within time limited, effect of.

If the Attorney-General, Petitioner or Plaintiff does not deliver a reply or demurrer, or any party does not deliver any subsequent pleading, or a demurrer, within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and the statements of fact in the pleading last delivered shall be deemed to be admitted.

E. O. xxix. R. 12. See Rule 76.

109. RULE 84.*

If no reply or demurrer or subsequent pleading delivered after expiring of one month after period allowed defendant may apply to dismiss action for want of prosecution.

In case the Attorney-General, Petitioner or Plaintiff shall not deliver a reply or demurrer or any subsequent pleading or a demurrer within *a month* after the period allowed for that purpose shall have expired, the Defendant instead of applying for an order for trial, may apply to the Court or a Judge to dismiss the action with costs for want of prosecution, and on the hearing of such application the Court or Judge may order the action to be dismissed accordingly, or may make such other order on such terms as to the Court or Judge shall seem just.

110. RULE 85.—(*May 1st*, 1895.)

Dismissal of Action for want of prosecution—Notice of trial.

If the plaintiff does not within three months after the close of the pleadings, or within such extended time as the Court or a Judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, or may apply to the Court or Judge to dismiss the action for want of

prosecution; and on the hearing of such application, the Court or a Judge may order the action to be dismissed accordingly, or make such other order and on such terms, as to the Court or Judge may seem just.

E. O. xxxvi., R. 12. See preceding Rules.

Application to dismiss.—An application to dismiss for want of prosecution should ordinarily be made by summons. *Freason v. Loe*, 26 W.R. 138. It may, however, be made in Court on motion; and, if the usual notice of motion is given, and the plaintiff does not at once submit to speed the cause, and tender the costs of the notice, the defendant, if the usual order is made, will have his costs of making the motion in court. *Evelyn v. Evelyn*, 13 Ch. D, 138. As to the proper course to adopt, where there are several defendants in respect of some of whom the pleadings are not closed, see *Ambroise v. Evelyn*, 11 Ch. D, 759. (*Wilson Jud. Act*, 293.)

Order to dismiss action.—Where an order is made dismissing an action unless some act is done within a specified time, if the order be not appealed against, the time for doing the act cannot be enlarged after it has expired for the action is dead. *Whistler v. Hancock*, 3 Q.B.D. 83; *King v. Dareuport*, 4 Q.B.D. 402. But the time for appealing against such an order may in a proper case be enlarged after it has expired. *Burke v. Rooney*, 4 C.P.D. 226; *Carter v. Stubbs*, 6 Q.B.D. 116. (*Wilson Jud. Act*, 237.)

111. RULE 85.*

Judgment by default may be set aside by Court or Judge.

Any party may be relieved against any default under any of these Rules, by the Court or a Judge, upon such terms as to costs or otherwise as such Court or Judge may think fit.

E. O. xxix. R. 14.

CONSENT ORDER.

112. RULE 1.*—(*February 8th*, 1894.)

Consent of parties to become an order of Court.

Any consent in writing signed by the parties, or their attorneys, may, by permission of the Registrar, be filed, and shall thereupon become an order of Court.

DISCOVERY AND INSPECTION.

113. RULE 86.*

Petitioner, plaintiff or defendant may be examined by opposite party.

After the defence is filed any Plaintiff and any Petitioner in a Petition of Right, and any Defendant other than the Crown or the Attorney-General may, at the instance of the opposite party, and without order, be examined for the purposes of discovery before the Registrar or before some other officer of the

court specially appointed for that purpose, or before a Judge, if so ordered by the Court or a Judge.

E. O. xxxi.

For a dissertation on the question of Discovery, see *Canadian Law Times*, vol. 12, pp. 25-73.

In a Petition of Right the Crown is entitled as against the suppliant to an order for the discovery of documents under the combined effects of *The Petitions of Right Act*, 1860, and the rules of the Supreme Court Ord. xxi. 2, 12. *Tomline v. The Queen*, 4 Ex. D. 252.

The party to be examined must be served with a subpœna and a copy of the appointment given by the Examiner must be served upon the solicitor of the party to be examined.

Where the examination on discovery of the party is to take place before another officer than the Registrar of the court, an order for the appointment of such examiner may be obtained *ex-parte* from the Court or a Judge.

114. RULE 87.*

Departmental or other officers of the Crown may be examined.

Any departmental or other officer of the Crown may by order of the Court or a Judge be examined at the instance of the party adverse to the Crown in any action for the same purposes and before the same officers or before the Court or a Judge, if so ordered.

For authorities bearing upon the above rule see *inter alia*, *Stephen's Digest of evidence*, p. 126 ; *Taylor on evidence*, pp. 808, 809 and 814 ; *Thomas v. The Queen*, L. R. 10. Q. B. 44.

115. RULE 88.*

Examination in actions against Corporations.

If any party to an action be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons empowered by law to sue or to be sued, either in its own name, or the name of any officer or other person, any member or officer of such corporation, company or body, may at the instance of any adverse party in the action and without order be examined for the purposes of discovery before the same officers in the two next preceding orders mentioned, or before a Judge, if so specially ordered by the Court or a Judge.

The practice followed under the above rule has been to file with the Registrar an affidavit showing that the person desired to be examined, before him, is a member or officer of the corporation, company or body party to the action in question.

116. RULE 89.*

Subpœna to be issued to enforce attendance.

The attendance of a party, officer or other person, for ex-

amination under the three next preceding Rules, may be enforced by a writ of subpœna ad testificandum in the same manner as the attendance of witnesses for examination at the trial of an action is to be enforced.

117. RULE 90.*

Production of documents at examination.

Such parties or officers, or other persons liable to examination may be compelled to produce books, documents, and papers by a writ of subpœna *duces tecum*.

118. RULE 91*

Parties to be examined to be paid.

Parties, officers, or other persons called upon to submit to examination under the preceding rules shall be entitled to be paid the same fees as witnesses subpœnaed to give evidence at the trial of an action.

119. RULE 92.*

Examination of parties without the jurisdiction by interrogatories.

Any person liable to examination for purposes of discovery under any of the foregoing rules, being without the jurisdiction, may by order of a Judge be called upon to answer upon oath written interrogatories for the like purpose, and within such time as may be fixed by the order of the Judge.

See Rule 44.

120. RULE 93.*

Case of party omitting to answer.

If any person examined or interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a Judge for an order requiring him to answer, or to answer further, as the case may be, and an order may be made requiring him to answer, or answer further, either by affidavit or *viva voce* examination, as the Judge may direct.

E. O. xxxi R. 11.

121. RULE 94.*

Order for production may be made by Court or Judge at any time.

It shall be lawful for the Court or a Judge, at any time during the pendency of any action or proceeding, to order the production by any party thereto, or by any officer of the Crown, upon oath, of such of the documents in his possession or power relating to any

matter in question in such action or proceeding, as the Court or Judge shall think right, and the Court may deal with such documents when produced in such manner as shall appear just.

E. O. xxxi. R. 10.

See Wilson's Judicature Acts, 6th Edn. p. 260.

122. RULE 95.*

Order for discovery of documents may be obtained from Registrar upon præcipe.

The Attorney-General, plaintiff or petitioner, after the time for delivering the defence has expired, and any party after the defence is delivered, may obtain an order, of course, upon præcipe, directing any other party, or any officer of the Crown to make discovery on oath of the documents which are or have been in his possession or power relating to any matter in question in the action.

E. O. xxi. R. 12.

As amended by the General Order of March 7th, 1888. Under the old rule an order for discovery of documents was obtainable on application to a Judge; the present rule directs that such order is obtainable, upon præcipe, from the Registrar of the Court.

The following forms may be used:

1. *Præcipe for order for discovery.*

(Heading as in Form 2.)

I, A. B., solicitor for the [*state whether Suppliant or Respondent*] pray for an order on the Suppliant [*as the case may be*] to make discovery on oath of the documents in his possession.

Dated, at Ottawa, this ..... day of ..... A.D., 1895.

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2. *Order for discovery of documents.*

IN THE EXCHEQUER COURT OF CANADA.

IN THE MATTER OF THE PETITION OF RIGHT OF

A. B.

Suppliant:

vs.

Her Majesty the Queen,

Respondent.

Upon the application of the.....It is ordered that within ten days after service hereof on the suppliant, his Attorney or Agent, [*or, as the case may be*] the Suppliant [*or, as the case may be*] do make discovery on oath by affidavit of the documents which are or have been in his possession or power relating to any matter in question in this action, or what he knows as to the custody they or either of them are in, and whether he objects (and if so on what grounds) to the production of such as are in his possession or power.

Dated, &c.

123. RULE 96.*

Affidavit to be made by party upon whom order made.

The affidavit to be made by a party or officer of the Crown,

against whom such order as is mentioned in the last preceding rule has been made, shall specify which, if any, of the documents therein mentioned, he objects to produce, and it may be in the Form in Schedule I hereto, with such variations as circumstances may require.

E. O. xxxi. R. 13.

124. RULE 97.*

Production of documents for inspection.

Every party to an action or other proceeding shall be entitled, at any time before or at the hearing thereof, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his Attorney, Solicitor or Agent and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless he shall satisfy the Court that such document relates only to his own title, he being a Defendant to the action, or that he had some other sufficient cause for not complying with such notice.

E. O. xxxi. R. 14.

125. RULE 98.*

Form of notice to produce.

Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the form in Schedule K hereto.

E. O. xxxi. R. 15.

126. RULE 99.*

Notice when inspection may be made.

The party to whom such notice is given shall, within *two days* from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 97, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within *four days* from the receipt of such notice, deliver to the party giving the same a notice stating a time within *three days* from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, Attorney or Agent at Ottawa, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice may be in the Form in Schedule L hereto, with such variations as circumstances may require.

E. O. xxxi. R. 16.

127. RULE 100.*

Order for inspection may be obtained.

If the party served with notice under Rule 97 omits to give

such notice of a time for inspection, or objects to give inspection, the party desiring it may apply to a Judge for an order for inspection.

E. O. xxxi. R. 17.

128. RULE 101.*

Application for, to be to a Judge upon affidavit.

Every application for an order for inspection of documents shall be to a Judge. And except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party or of an officer of the Crown.

E. O. xxxi. R. 18.

129. RULE 102.*

Judge may order any question or issue to be first determined.

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

E. O. xxxi. R. 19.

See Rules 137, 187, *et seq.*

130. RULE 103.*

Consequences of not appearing to reply to order.

If any party or officer of the Crown fails to comply with any subpœna or order for *viva voce* examination, to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a Plaintiff or Petitioner in a petition of right, be liable to have his action dismissed for want of prosecution, and, if a Defendant, to have his defence, if any, struck out and to be placed in the same position as if he had not defended, and the party examining or interrogating may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly.

E. O. xxxi. R. 20.

131. RULE 104.*

How service of order for discovery or inspection may be made.

Service of an order for discovery or inspection made against any party on his Attorney, Solicitor, or Agent shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

E. O. xxxi. R. 21.

132. RULE 105.*

If at trial part of any examination read, the whole to be considered in evidence.

If at any trial of an action, or issue, any part of any examination, or any one or more of the answers of the opposite party to interrogatories shall be read the whole of the examination or answers shall be considered as being in evidence.

ADMISSIONS.

133. RULE 106.*

Notice of admission.

Any party to a cause or matter may give notice, by his pleading or otherwise, that he admits the truth of the whole or part of the case of any other party.

E. O. xxxii. R. 1. *Wilson's Judicature Acts*, p. 268.

As amended by Rule 10 of the General Order of May 1st, 1895. The old rule read as follows, to wit:—"Any party to an action may give notice, by "his own statement or otherwise, that he admits the truth of the whole or "any part of the case stated or referred to in the statement of claim, "defence, or reply of any other party."

The object of the amendment, in re-enacting the English rule, has been to enlarge the scope of the rule and make it more general.

134. RULE 107.*

Notice to admit and costs of refusing.

Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the action may be unless at the hearing or trial the Court certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is in the opinion of the taxing officer a saving of expense.

E. O. xxxii. R. 2.

135. RULE 108.*

Form of notice.

A notice to admit documents may be in the Form in Schedule M hereto.

E. O. xxxii. R. 3.

136. RULE 109.*

Affidavit as to admissions.

An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents, and annexed to the affidavit, shall be sufficient evidence of such admissions.

E. O. xxxii. R. 4.

INQUIRIES AND ACCOUNTS.

137. RULE 110.*

Inquiries and accounts.

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 it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

E. O. xxxiii.

See Rules 129, 197 *et seq.*, and sec. 26 of 50-51 Vict., ch. 16.

QUESTIONS OF LAW.

138. RULE 111.*

Special case may be stated for opinion of Court.

The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at trial.

E. O. xxxiv. R. 1.

Rule 111 of the General Order of the 4th day of March, 1876, has been repealed by the General Order of the 8th day of February, 1894, and the above substituted therefor.

The original rule has been amended chiefly by substituting the words "the parties to any cause or matter" for the words "the parties after the information, petition of right or statement of claim has been filed," in the first line thereof.

139. RULE 112.*

Questions of law may be first tried.

If it appear to the Court or a Judge, either from the statement of claim or defence or reply or otherwise, that there is in any action a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, the Court or Judge may make an order accordingly, and may direct such questions of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or Judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

E. O. xxxiv. R. 2.

140. RULE 113.*

Special case to be printed.

Every special case shall be printed by the Attorney-General or plaintiff, in same form and manner as hereinbefore provided, with reference to pleadings, and shall be signed by counsel for all parties, and shall be filed by the Attorney-General or plaintiff. Printed copies for the use of the Court shall be delivered by the party printing the same at the time of setting down the case for argument.

E. O. xxxiv. R. 3.

The original rule (Mch. 4th, 1876) has been amended in pursuance of rule 11 of the General Order of May 1st, 1897, by inserting therein the word "plaintiff" for the word "petitioner," wherever the latter occurs.

141. RULE 114.*

Special case in actions where married women, infant or lunatic is party.

No special case in an action to which a married woman, infant or person of unsound mind is a party shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant or person of unsound mind, are true.

E. O. xxxiv. R. 4.

142. RULE 115.*

Entry of special case for argument.

Either party may enter a special case for argument by delivering to the proper officer a præcipe, in the Form in Schedule N hereto, and also if any married woman, infant, or person of unsound mind be a party to the action, producing a copy of the order giving leave to enter the same for argument.

E. O. xxxiv. R. 5.

TRIALS.

143. RULE 116.*

Order for trial. Setting down for trial without order at general sittings.

When any action is ripe for trial or hearing, a judge may, on application of any party and after summons served on all parties to the suit, fix the time and place of trial and hearing, and may direct when and in what manner and upon whom notice of trial or hearing, together with a copy of the Judge's order, is to be served, and such notice and order shall be forthwith served accordingly.

Sittings of the Exchequer Court of Canada, at which any action ripe for trial or hearing may be set down for trial by either party thereto, upon giving the opposite party ten days' notice of trial, or by consent of parties, and without taking out any summons, or obtaining any directions as hereinbefore provided, may be held at any time and place appointed by a Judge, of which notice shall be published in the *Canada Gazette*.

Such sittings will be continued from day to day until the business coming before the Court is disposed of.

On the first day of each of such sittings, the Court will hear any argument of demurrer, special cases, motion for judgment, appeal from the Report of the Registrar or other Officer of the Court, or other motion, application or business which cannot be transacted by a Judge in Chambers.

As amended by the General Order of January 12th. 1891.

For forms of præcipe setting case down for trial, see Schedule H.

When the issues are joined and the action ready for trial, any party may apply by summons to fix the time and place of trial. (For forms of summons and order see post under this Rule.)

When, however, a general sitting has been fixed by a General Order of which notice has been given in the *Canada Gazette*, the party desiring to proceed to trial with his case may set down the same upon præcipe and give the opposite party ten days notice thereof, unless such delay is dispensed with by consent. Such general sittings are annually fixed for the whole Dominion with the view of affording the subject an opportunity to have his case tried within the province in which he resides. See section 20 of *The Exchequer Court Act*.

Notwithstanding section 534 of *The Criminal Code*, 1892, the Judge of the Exchequer Court, pending the existence of criminal proceedings against the defendant in respect of the subject at issue in a case before the Exchequer Court, refused to entertain an application to fix the trial, holding that as a matter of propriety the criminal case should be disposed of before proceeding with the civil suit. *The Queen v. St. Louis*, January 14th, 1895.

The practice invariably followed at the trial of an expropriation case, under 52 Vict., ch. 13, has been for the Crown to prove the expropriation unless the defence has, by its pleadings, admitted the same and further to produce a certified copy of the plan and description of the lands taken (sec. 12). The evidence on the question of the value of the lands expropriated is adduced by the defendant, the Crown follows *contra* and the defendant

is entitled to the rebuttal. The defendant opens argument, the Crown follows and the reply is given to the defendant. It is, however, contended that the King cannot be deprived of His right to a general reply in all cases. *Re The Parlement Belge*, L. R. 4 P. D. 144.

Where the claimant is plaintiff he must show his title. Sutherland *on Damages*, Vol. 3, p. 448.

The application to be made in pursuance of the first paragraph of the above rule should be to a Judge at Chambers by way of summons. This rule is applicable to all the provinces, including the Province of Quebec, and as the proceeding by way of summons and order is one not known in the procedure of the latter province, it has been thought advisable to give a form both of summons and order granted under the rule.

SUMMONS TO FIX TRIAL, &C.

In the Exchequer Court of Canada.

Before the Honourable Mr. Justice Burbidge.

In Chambers.

IN THE MATTER of the Petition of Right of
A. B. Suppliant;

and

Her Majesty the Queen, Respondent.

Let the Attorney-General of the Dominion of Canada, his attorney or agent attend on behalf of Her Majesty before the Judge at Chambers, in the City of Ottawa, on.....the.....day of..... instant (or next) at.....o'clock in the forenoon or as soon thereafter as Chambers may be held, to show cause why the trial in the matter of the above petition should not be fixed to take place at the City of..... .....in the Province of.....on the.....day of .....A.D. 18....., or at such other time and place as to the said Judge may seem best; and why the said Judge should not also direct when and in what manner and upon whom notice of trial or hearing together with a copy of the order to be made by the said Judge is to be served.

Dated at Ottawa, this.....day of.....A.D. 18.....

ORDER FIXING TRIAL, &C.

(Style of cause as in summons.)

Upon reading the summons granted herein (and the affidavit of service thereof, if any) and upon hearing Counsel for all parties;

I do order that the trial or hearing of this matter do take place before this Court, at the Court House in the City of.....on.....day of .....A.D. 18....., at eleven o'clock in the forenoon.

And I do further order that notice of trial at the time and place aforesaid, together with a copy of this order be within three days from the date hereof, served on Her Majesty's Attorney-General for the Dominion of Canada, by leaving such notice and copy of said order at the office of the said Attorney-General in the City of Ottawa, and also served within the time aforesaid on A. F. M., the Solicitor for the said Attorney-General, by leaving such notice and copy of said order at the office of the said A. F. M. This order to be without prejudice to any application that may be made to

the presiding Judge at the trial of this matter by any of the parties hereto to have part of the evidence taken or the matter determined at some place other than that hereinbefore appointed, under the provisions of the Statute in that behalf.

Dated at Ottawa, this.....day of.....A.D. 189....

144. RULE 117.*—REPEALED.

The above rule which dealt with *Venire Facias* in trials by jury has been repealed by rule 37 of the General Order of the 1st day of May, 1895. Section 23 of *The Exchequer Court Act* provides that issues of fact and inquisitions in the Exchequer Court shall be tried by the judge without a jury.

145. RULE 118.*

Trial of issues of facts to be at bar.

All trials of issues of fact in the Exchequer Court shall be deemed to be trials at the bar of the said Court and not at *nisi prius*.

NOTICE OF TRIAL AND TRIAL.

146. RULE 119.*

Countermand of notice of trial.

No notice of trial shall be countermanded except by consent or by leave of the Court or a Judge, which leave may be given subject to such terms as to costs as may be just.

E. O. xxxvi. R. 13.

147. RULE 120.*

Sitting or trial stand adjourned when judge unable to attend.

In case the Judge is unable from any cause to attend on the day fixed for any sitting or for the trial of any issue, such sitting or trial shall stand adjourned from day to day until he is able to attend.

As amended by the General Order of the 12th day of January, 1891. The provisions of the old rule vested in the sheriff, whenever the Judge was unable to attend on a day fixed for the sitting or trial, the power to adjourn the sitting of the court from day to day until the Judge could attend. The new rule has taken away such power from the sheriff and provides that, in such cases as above mentioned, the sitting or trial shall of itself stand adjourned until the Judge is able to attend.

148. RULE 121.*

Default by defendant in appearing at trial.

If, when an action is called on for trial the Attorney-General, plaintiff or petitioner appears, and the defendant does not appear,

then the Attorney-General, plaintiff or petitioner may prove his claim as far as the burden of proof lies upon him.

E. O. xxxvi. R. 18.

149. RULE 122.*

Default by Attorney-General or petitioner in appearing at trial.

If, when an action is called on for trial, the defendant appears and the Attorney General, plaintiff or petitioner does not appear, the defendant shall be entitled to judgment dismissing the action.

E. O. xxxvi. R. 19.

150. RULE 123.*

Postponement of trial.

The Judge may, if he thinks it expedient for the interests of justice, postpone or adjourn the trial for such time, and upon such terms, if any, as he shall think fit.

E. O. xxxvi. R. 21.

151. RULE 124.*

Directions by Judge at trial.

Upon the trial of an action the Judge may at, or after such trial, direct that judgment be entered for any or either party, as he is by law entitled to upon the findings, and either with or without leave to any party to move, to set aside, or vary the same, or to enter any other judgment upon such terms, if any, as he shall think fit to impose, or he may direct judgment not to be entered then, and leave any party to move for judgment. No judgment shall be entered after a trial, without the order of a Judge.

E. O. xxxvi. R. 22.

See Rules 177 and 178.

152. (*February 28th*, 1877.)*

Provisions when Acting Registrar performing duties of Registrar out of Ottawa.

It is ordered that the suppliant in any Petition of Right, and the plaintiff in any other case, shall, on the first day of the sitting of the Court for the trial of any cause to be tried out of the City of Ottawa, file with the Acting Registrar of the said Court a copy of all the pleadings in the causes certified by the Registrar of the Court at Ottawa.

That at the time of delivering the said pleadings to the Acting Registrar, the suppliant or plaintiff shall pay over to him the sum or fee of $6 and on each day at the opening of the Court, a like sum of $6 for every day during which the said trial continues.

If the suppliant or plaintiff omits or refuses to pay in such sum then the defendant may do so and it shall be taxed or allowed him in the costs of the suit. If both parties neglect or refuse to pay such sum, then the Judge trying the cause may order that the same may be struck out of the list, and not further proceeded with at the said sittings, making such order as to the costs incurred at the trial up to that time as he may think fit, or he may in his discretion reserve the question of costs or make no order respecting the same.

The Acting Registrar shall out of the said money be paid a fee of $6 per diem for each day actually engaged in Court.

If at the termination of the sittings or at any time thereafter it is found that a sum has been paid to the Acting Registrar in pursuance of this order in excess of that which may have been required to pay the fees of such Acting Registrar and other charges payable thereout then the Court or a Judge may order such excess to be refunded to the party who may have paid the same.

The above is a General Order made on February 28th, 1877.

See Rules 153, 154 and 155.

INSTRUCTIONS TO ACTING REGISTRARS.

(Outside of Ottawa.)

1. It would be advisable to post up in your office, some six weeks before the sitting of the Court, a copy of the General Order of February 28th, 1877, above recited, which makes provision for your guidance in the performance of your duties.

The only remuneration the Acting Registrar is entitled to under the above General Order is the sum of $6 per diem and no more; if any fee for filings, swearing witnesses, or otherwise, is collected by him, he has to remit the same to the Registrar's office at Ottawa.

It would also be well to call the Barristers' attention to the foregoing Rule, so as to enable them to get certified copies of the pleadings in time for trial.

2. Writs of Subpœna *ad testificandum*, when required, will be issued from the Registrar's Office at Ottawa.

3. Full minutes of the sitting of the Court are to be duly kept; mention being made of the date, the time of the opening and adjourning of the sitting and of the recess (if any), of the swearing of the shorthand writer, the witnesses, and by whom examined and cross-examined, of every important consent of the parties, of all the rulings of the Court and of all filings.

4. All papers and documents of any description filed at the trial are to be regularly docketed by mentioning the style of cause, the general description of such paper, the party filing the same and the date of filing.

5. By the 120th Rule of the Rules and Orders of the Exchequer Court of Canada, as amended by the General Order of the 12th day of January, 1891, it is provided that: "in case the Judge is unable from any cause to attend on "the day fixed for any sitting or for the trial of any issue, such sitting or "trial shall stand adjourned from day to day until he is able to attend."

6. It is desirable that you should be in a position to give the Judge the name of a competent shorthand writer, in case he is required at trial.

Your attention is also directed to Schedule X, hereunto, regulating the practice and fees in respect of evidence taken by a shorthand writer.

Where the evidence is transcribed from day to day, as may be directed by the Court, a copy of the same may be handed to the plaintiff's and defendant's solicitors respectively upon payment of the fee due by them for the evidence adduced in their behalf; but when the evidence is not so transcribed from day to day, it would be advisable that the shorthand writer should be instructed by you to transmit to the Registrar's office at Ottawa, as soon as possible after the trial, the four copies of the evidence, with his account in duplicate, when a cheque will be sent to him in payment of the same. The money levied by you in pursuance of the above mentioned rules and schedule should be transmitted to the Registrar's office at Ottawa, and the shorthand writer will be, in every case, paid by an official cheque issued from Ottawa.

7. All papers and documents filed before you at trial, together with the minutes of the sitting, should be transmitted to the Registrar's office at Ottawa, immediately after the conclusion of the trial.

8. On application to the Registrar at Ottawa, the Sheriff can obtain forms of account for his services before the Court

153. RULE 125.*

Findings of fact and directions of Judge to be entered by Acting Registrar.

Upon every trial, where the officer present at trial is not the Registrar by whom judgments ought to be entered, the Acting Registrar shall take down all such findings of facts as the Judge may direct to be entered, and the directions, if any, of the Judge as to judgment, and shall, forthwith after trial, transmit such notes, duly certified under his signature, to the Registrar of the Court, at Ottawa.

E. O. xxxvi. R. 23.

As amended by Rule 12 of the General Order of the 1st day of May, 1895.

See Rule 152.

154. RULE 126.*

Where Judge directs the Acting Registrar to enter judgment in favour of any party absolutely.

If, under the circumstances mentioned in Rule 125 hereof, the Judge shall direct that any judgment be entered for any party absolutely, the minutes of trial, duly certified by the Acting Registrar to that effect, shall be a sufficient authority to the Registrar to enter judgment accordingly.

E. O. xxxvi. R. 24.

As amended by Rule 13 of the General Order of May 1st, 1895.

The two preceding rules have been amended, as above mentioned, with the object of defining in a clearer manner certain duties to be performed by the Acting Registrar at the trial of an action.

155. RULE 127.*

Where Judge directs judgment to be entered subject to leave to move.

If the Judge shall direct that any judgment be entered for the party subject to leave to move judgment shall be entered accordingly upon the production of the officer's certificate.

E. O. xxxvi. R. 25.

156. RULE 128.*

Judge at trial may refer cause.

Where after a trial of issues of fact it appears to the Judge who has tried the issues that there ought to be further enquiry and investigation as to accounts or like matters not comprised in the issues, and which cannot be conveniently enquired into at a trial before a Judge, the Judge may direct a preliminary judgment to be entered referring the action to a Judge in Chambers or to the Registrar or some other officer of the Court and either directing that final judgment be entered according to the result of the reference, or reserving the case for further consideration after the report for final judgment.

See Rules 159 *et seq.* 129, 137 and 187 *et seq.*

As amended by Rule 14 of the General Order of May 1st 1895, by striking out from the original rule the words "with or without a jury" wherever the same occurred.

157. RULE 129.*

Printed copies of pleadings to be furnished for use of Judge.

The party who gives notice of trial shall furnish for the use of the Judge, *four days* before the trial, a printed copy of the pleadings, issues and order for trial.

E. O. xxxvi. R. 17.

158. RULE 130.*

Copy of Judge's Notes, when to be made.

After the trial of any action or issues by a Judge, the Registrar shall, if so directed by the Judge, cause a copy of the Judge's notes of the evidence to be made, and after careful examination of the same he shall cause such copy to be filed with the other papers in the cause.

The original rule has been amended by Rule 15 of the General Order of the 1st day of May, 1895, by striking out, in the second line thereof, the words "alone, or by a Judge with a Jury," and also by inserting after the words "Registrar shall," in the third line thereof, the words "if so directed by the Judge."

159. RULE 131.*

Evidence Generally.

In the absence of any agreement between the parties, and subject to the provisions contained in the 63rd section of the said Act (*a*) which requires that issues of fact shall be tried according to the laws of the Province in which the cause originated, including the laws of evidence, and subject also to these rules, the witnesses at the trial of any action shall be examined *viva voce* and in open Court, but subject to the said provisions of the said Act, the Court, or a Judge, may at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with, be examined *viva voce* by interrogatories before a Commissioner or other officer of the Court provided that where it appears to the Court or Judge that the other party *bonâ fide*, desires the production of a witness for cross-examination and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

E. O. xxxvii. R. 1.

For the law on the question of pooof and evidence in the Province of Quebec, see Arts. 1208 to 1256 of the Civil Code for that Province; and for the practice and procedure relating to the same subject, see Arts. 230 to 321 of the Civil Code of Procedure L.C.

1. *Burden of proof—Accident on Government railway.*—On the trial of a petition of right claiming damages for personal injuries sustained in an accident upon a Government railway, alleged to have resulted from the negligence of the persons in charge of the train, the burden of proof is upon the suppliant. He must show affirmatively that there was negligence. The fact of the accident is not sufficient to establish a *primâ facie* case of negligence. *Dubé v. The Queen*, 3 Ex. C. R. 147.

2. *Receipt—Error—Parol evidence—Arts* 14, 1234 *C.C.L.C.*—The prohibition of Art. 1234 C. C. against the admission of parol evidence to contradict or vary a written instrument, is not *d'ordre public*, and if such evidence is admitted without objection at the trial it cannot subsequently be set aside in a court of appeal. Parol evidence in commercial matters is admissible against a written document to prove error. *Ætna Insurance Company v. Brodie*, 5 Can. S. C. R. 1 followed. *Schwersenski v. Vineberg*, 19 Can. S.C.R. 243.

3. *Examination of same witness twice.*—There is nothing illegal in examining the same witness twice on behalf of the same party. It is a matter of discipline entirely in the discretion of the court. *St. Denis v. Grenier*, 2 L.C.J. 93.

(*a*) This refers to section 63 of *The Supreme and Exchequer Court Act*, 38 Vict., ch. 11 (repealed), and the present rule must be read in the light of subsection 50 of section 7 of *The Interpretation Act*. See *ante*. p. 216.

160. RULE 132.*

Evidence by affidavit in certain cases.

Upon any motion, petition or summons, evidence may be given by affidavit, but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

E. O. xxxvii. R. 2.

161. RULE 133.*

What affidavits to contain.

Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions on which statements as to his belief with the grounds thereof may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter or copies or extracts from documents shall be paid by the party filing the same.

E. O. xxxvii. R. 3.

162. RULE 134.*

Court or Judge may order any person to be examined.

The Court or a Judge may, in a cause where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer of the Court, or any other person or persons duly authorized to take or administer oaths in the said Court, and at any place, of any witness or person, and may order any deposition so taken to be filed in the Court, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the Court or a Judge may direct.

E. O. xxxvii. R. 4.

For similar practice in the Province of Quebec, see Art. 240 of the Civil Code of Procedure, L.C.

An application for the examination of a person, *viva voce*, before trial is premature when made before issues joined; but when an affidavit in support shows the witness is about to leave the Dominion, that the voyage is not a mere pretence for evading examination and that the matter is pressing, the order will be made. *Fischer vs. Hahn*, 13 C. B. N. S. 659 followed. *The Queen vs. Suitor*, March 21st, 1892.

163. RULE 135.*

Deponents may be cross-examined on affidavit.

Any person making an affidavit to be used in any action may be required to appear before the Registrar, or any other person specially appointed for that purpose, to be cross-examined thereon. The attendance of such person may be enforced by Subpœna *ad testificandum*. Any person served with a subpœna for such

purpose shall be entitled to the same fees as a witness at trial. *Two clear days'* notice of such cross-examination is to be given by the cross-examining party to the opposite party.

Taylor's C. Chy. O. 268-269.

164. RULE 136.*

How affidavits to be drawn.

Affidavits are invariably to be drawn in the first person, and in numbered paragraphs, and no costs are to be taxed for any affidavits not so drawn.

Gen. Rules (Ont.) T. T. 1856, 112.

165. RULE 137.*

When to be filed.

Affidavits to be used in support of any motion or application are to be filed when the order *nisi* or summons is moved or applied for, or, if the motion is to be made upon notice, before notice of motion is served.

Gen. Rules (Ont.) T. T. 1856, 117. Taylor's C. Chy. O. 261.

NEW TRIALS.

166. RULE 138.*

Application for new trial.

A party desirous of obtaining a new trial of any cause must apply for the same to the Court by motion for an order calling upon the opposite party to show cause at the expiration of *eight days* from the date of the order, or so soon after as the case can be heard, why a new trial should not be directed. Such motion shall be made within *ten days* after the trial, or within such extended time as the Court or a Judge may allow.

E. O. xxxix. R. 1.

As amended by Rule 16 of the General Order of May 1st, 1895. The orignal Rule has been amended by striking out from the same, in the second and third lines thereof, the following words "in which a verdict has been found by a jury, or by a Judge without a jury."

See note 3 under Rule 171.

167. RULE 139.*

Order for when to be served.

A copy of such order shall be served on the opposite party within *four days* from the time of the same being made.

E. O. xxxix. R. 2.

168. RULE 140.*

Not to be granted on certain grounds.

A new trial shall not be granted unless in the opinion of the Court some substantial wrong or miscarriage has been occasioned

in the trial of the action; and if it appear to the Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only.

E. O. xxxix. R. 3.

As amended by Rule 17 of the General Order of May 1st, 1895. The original Rule has been amended by striking out from the second and third lines thereof the following words, "on the ground of misdirection or of "the improper admission or rejection of evidence," and further by striking out the word "thereby" from the fifth line of the said Rule.

169. RULE 141.*

New trial may be ordered of any question.

A new trial may be ordered of any question in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

E. O. xxxix. R. 4.

170. RULE 142.*

Order to show cause to stay proceedings.

An order to show cause shall be a stay of proceedings in the action, unless the Court shall order that it shall not be so as to the whole or any part of the action.

E. O. xxxix. R. 5.

JUDGMENT.

171. RULE 143.*

Motion for judgment.

After the pleadings are closed, any party to the cause may apply to the Court or a Judge upon due notice of such application to the opposite party for an order dispensing with trial and permitting the cause to be set down forthwith on motion for judgment with liberty to prove documents and facts by affidavits on the motion for judgment, and the Court or a Judge may grant such application if it appear to them that no seriously controverted question of fact is likely to arise.

1. *Order—Judgment—Distinction between same.*—An accepted definition of the word "judgment" in the United States seems to be the following:—"The final determination of the rights of the parties in an action or proceeding." The class of judgments and decrees formerly called interlocutory is included in the definition of the word "order." "Every direction of the court or a judge made or entered in writing and not included in a judgment is an order." *Freeman on Judgment*, pp. 14-15.

2. For the distinction between an order and a final judgment, see the case of *Loring v. Illsby*, 1 California Rep. Ben. 1850, p. 28.

172. RULE 144.*

Judgment to be obtained on motion.

Except where by the Act or by these Rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment.

E. O. xl. R. 1.

173. RULE 145.*

Setting down on motion for judgment and giving notice.

Where at the trial of an action the Judge has ordered that any judgment be entered subject to leave to move, the party to whom leave has been reserved shall set down the action on motion for judgment, and give notice thereof to the other parties within the time limited by the Judge in reserving leave, or if no time has been limited, within *fourteen days* after the trial, the notice of motion shall state the grounds of the motion and the relief sought, and that the motion is pursuant to leave reserved.

E. O. xl. R. 2.

174. RULE 146.*

Where judgment not directed to be entered at trial, the Attorney-General, plaintiff or petitioner may set down action on motion for judgment, on his default defendant may do so.

Where at the trial of an action, the Judge abstains from directing any judgment to be entered, the Attorney-General, plaintiff or petitioner may set down the action on motion for judgment. If he does not so set it down, and give notice thereof to the other parties within *fourteen days* after the trial, any defendant may set down the action on motion for judgment, and give notice thereof to the other parties.

E. O. xl. R. 3.

175. RULE 147.*

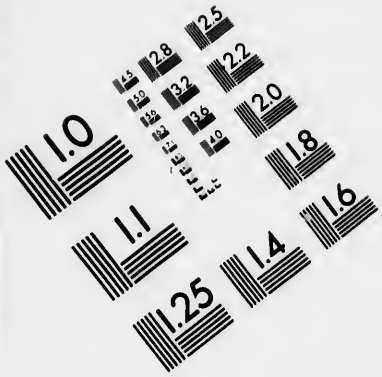
When preliminary judgment entered and reference ordered.

When at the trial of an action, a preliminary judgment has been directed to be entered ordering a reference to a Judge in Chambers, or to the Registrar or some other officer of the Court, any party may set the action down on motion for judgment at any time after the lapse of *fourteen days* from the filing of the report of the Judge, Registrar or other officer, if in the meantime no notice of appeal from the report shall have been given.

See Rules 192 and 193.

176. RULE 148.—REPEALED.

The above rule which made provision for proceedings at the trial of an action before a jury, has been repealed by Rule 37 of the General Order of May 1st, 1895.



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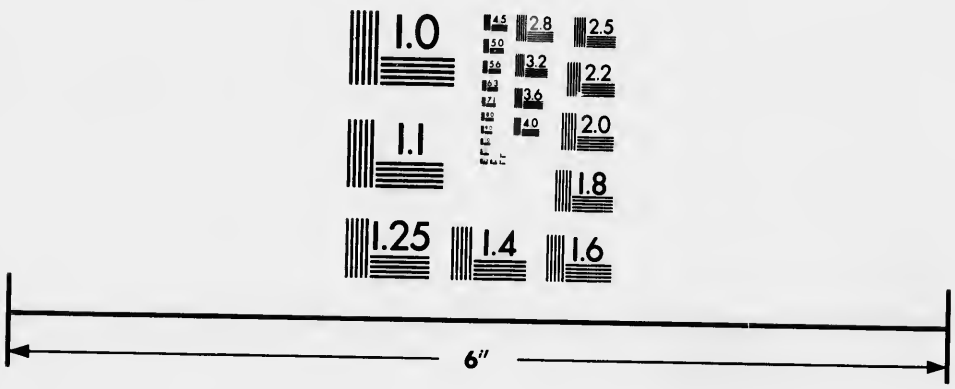

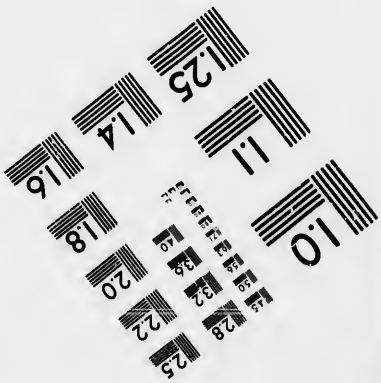

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177. RULE 149.*

Application for new trial or to set aside judgment.

Where at or after the trial of an action before a Judge, the Judge has directed that any judgment be entered, any party may, without any leave reserved, apply for a new trial, or to set aside the judgment, and to enter any other judgment upon the ground that the judgment so directed is wrong.

E. O. xl. R. 5.

As amended by Rule 18 of the General Order of May 1st, 1895. See Rules 151, 178 and Note 3 under Rule 171.

This Rule was partly taken from the English Rule and partly from the Ontario Judicature Act, Rule 798, subsec. (a). See *Holmested & Langton*, pp. 666-668.

1. *Application to re-open case.*—After an action had been tried and judgment delivered finding in favour of suppliant on an alleged breach of contract, it was referred to an officer of the Court to assess the damages, if any, suffered by the suppliant. Subsequently a motion was made on behalf of the Crown to re-open the case with leave to adduce further evidence. Affidavits were read in support of the application showing, *inter alia*, that the Crown had material evidence to adduce by which it would be shewn there was no contract at all, and further that Counsel had been in possession of such evidence at the time of the trial. *Held*, that the application should be granted upon the Crown paying in any event all costs incurred on the reference, costs of this application and of the further evidence to be adduced respecting the contract, with leave to suppliant to adduce evidence *contra*. *Humphrey v. The Queen*, January 9th, 1891.

2. *Application to re-open case.*—Where an action had been tried and was standing for judgment, an application was made for leave to re-open the case for the purpose of issuing a commission to Holland to adduce further and material evidence in respect of the trade-mark in question in the action. The application was allowed upon granting both parties leave to join in the commission and to adduce evidence respectively. *DeKuyper v. Van Dulken*, June 26th, 1893.

178. RULE 150.*

How and when motion under preceding rule to be made.

On every motion made pursuant to leave reserved to move to set aside or vary judgment, or made without leave under the next preceding Rule, the order shall be returnable in *fourteen days*. The motion shall be made within *thirty days* after the trial or within such extended time as the Court or a Judge may allow.

E. O. xl. R. 6.

As amended by Rule 19 of the General Order of May 1st, 1895.

See Rules 151 and 177.

179. RULE 151.*

Setting down on motion for judgment where issues or questions of fact ordered to be determined.

Where issues have been ordered to be tried or issues or

questions of fact to be determined in any manner, the Attorney-General, plaintiff or the petitioner may set down the action on motion for judgment as soon as such issues or questions have been determined. If he does not so set it down and give notice thereof to the other parties within *fourteen days* after his right to do so has arisen, then after the expiration of such *fourteen days* any defendant may set down the action on motion for judgment and give notice thereof to the other parties.

E. O. xl. R. 7.

See Rules 175 and 192.

180. RULE 152.*

Where some only of such issues have been tried.

Where issues have been ordered to be tried or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or Judge for leave to set down the action on motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other questions of fact.

E. O. xl. R. 8.

181. RULE 153.*

No action to be set down for motion for judgment after the expiration of one year.

No action shall, except by leave of the Court or a Judge, be set down on motion for judgment after the expiration of *one year* from the time when the party seeking to set down the same first became entitled so to do.

E. O. xl. R. 9.

182. RULE 154.*

Proceedings on motion for judgment.

Upon a motion for judgment, or for a new trial, the Court may, 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 shall be 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 enquiries to be taken and made as it may think fit; and so soon as the issues are

tried, or the report filed, as the case may be, the motion may be brought on again for further consideration on *ten days'* notice by any party, and any application for a new trial of the issues to alter the entry of the findings of the Judge at the trial of the issues, or vary or refer back the report of the Judge, Registrar, or other officer, or to reverse the findings therein contained, shall come on and be heard at the same time as the further consideration of the motion for judgment: Provided at least *eight days'* notice of such application shall have been given.

E. O. xl. R. 10.

As amended by Rule 20 of the General Order of May 1st, 1895, by striking out the words "or Jury" wherever they occurred in the original Rule.

183. RULE 155.*

Order may be applied for on admission of facts.

Any party to an action may at any stage thereof apply to the Court or a Judge for such order as he may, upon any admissions of fact in the pleadings, be entitled to, without waiting for the determination of any other question between the parties. The foregoing Rules shall not apply to such applications, but any such application may be made by motion, so soon as the right of the party applying to the relief claimed has appeared from the pleadings. The Court or a Judge may, on any such application, give such relief, subject to such terms, if any, as such Court or Judge may think fit.

E. O. xl. R. 11.

184. RULE 156.*

Entry of judgment, form, &c.

Every judgment shall be entered by the proper officer in the book to be kept for the purpose. An office copy of the judgment stamped with the seal of the Court shall be delivered to the party entering the same. The forms of Schedule O may be used with such variations as circumstances may require.

E. O. xli. R. 1.

When judgment has been delivered the party desirous of taxing costs and settling or entering judgment should, through his agent, apply to the Registrar's Office for an appointment. The general practice is to obtain but one appointment for settling the judgment and taxing costs, so that both may be done at one time. A draft of the judgment and the bill are prepared and served on the opposite party with a copy of the appointment. On the return of the appointment the parties attend before the Registrar, and the settlement of the minutes of judgment and the taxing of costs are proceeded with. If any party is dissatisfied with the Registrar's ruling he may appeal to the Judge at Chambers to review the same.

185. RULE 157.*

When to be dated.

Where any judgment is pronounced by the Court or a Judge

in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced and the judgment shall take effect from that date.

E. O. xli. R. 2

1. *Nunc pro tunc.*—Where on appeal to the Supreme Court of Canada, the judgment of the Exchequer Court had been varied and the cause ordered to be sent back to the latter court with special directions, the judgment of the Exchequer Court given in pursuance of such directions was ordered to be dated of the day of the first judgment appealed from. *Young v. The Queen*, April 12th, 1892.

2. *Nunc pro tunc.*—Where an amendment is ordered to be made to a judgment with the view of expressing the intention of the court, the judgment will be dated *nunc pro tunc*. *Cassels' Digest, S. C. C.* p. 689.

3. *Nunc pro tunc.*—Where parties to an action had died between the date of hearing and the date of judgment, on application it was ordered to date the judgment of the day of hearing. *Cassels' Digest S. C. C. p.* 688.

186. RULE 158.

Effect of judgment on non-suit.

Any judgment of non-suit, unless the Court or a Judge otherwise directs, shall have the same effect as a judgment upon the merits for the defendant; but, in any case of mistake, surprise or accident, any judgment of non-suit may be set aside on such terms as to payment of costs or otherwise, as to the Court or a Judge shall seem just.

E. O. xli. R. 6.

The practice of non-suit at common law applies to the suppliant in a petition of right, and upon the question as to whether such non-suit is peremptory, see Clode, *on Petition of Right*, p. 181.

REFERENCES.

187. RULE 159.*

Proceedings on reference.

Where any cause or matter or any question in any cause or matter is referred to the Registrar or other officer of the Court, he shall, unless otherwise directed by the Court or a Judge, proceed with the hearing of the reference *de die in diem* in a similar manner as in actions tried by a Judge and jury.

E. O. xxxv. R. 30.

See Rules 129, 137 and 156.

188. RULE 160.*

Evidence may be taken upon.

Subject to any order to be made by the Court or Judge ordering the same, evidence shall be taken upon a reference before the Registrar or other Officer of the Court, and the attendance of witnesses may be enforced by *subpœna* in the same manner, as nearly as circumstances will admit, as at trials before a Judge.

E. O. xxxv. R. 31.

189. RULE 161.*

Power of Registrar or referee.

Subject to any such order as last aforesaid, the Registrar or other officer of the Court, shall have the same authority in the conduct of any reference as a Judge of the Court, when presiding at any trial before him.

E. O. xxxv. R. 32.

190. RULE 162.*

Registrar or referee not authorized to attach.

Nothing in these rules contained shall authorize the Registrar or any officer of the Court to commit any person to prison, or to enforce any order by attachment or otherwise.

E. O. xxxv. R. 33.

191. RULE 163.*

Registrar or referee may reserve questions for decision of Court.

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

E. O. xxxv. R. 34.

192. RULE 164.*

Report to be filed.

The report of a Judge, or the Registrar, or any other officer of the Court, to whom a reference has been made, shall be filed as soon as possible after it is signed, and shall become absolute and non-appealable if not appealed against within *fourteen days* after service of notice of the filing of the same.

Taylor's C. Chy. O. 252.

See Rules 175 and 179.

193 RULE 165.*

Appeal from Report.

Within *fourteen days* after service of the notice of the filing of any report, any party may, by a motion of which at least *eight*

days' notice is to be given, appeal to the Court against any report, and upon such appeal motion, the Court may reverse the findings of the report or vary or refer it back for further consideration to the Judge, Registrar or other officer of the Court, as the case may be.

Taylor's C. Chy. O. 253.
See Rules 175 and 179.

1. When an award of the Official Arbitrators, in an expropriation matter, was not excessive in view of the evidence before them, the Court sitting on appeal declined to interfere with it. *The Queen v. Carrier*, 2 Ex. C. R. 101.

194. RULE 166.*

Proceedings where judgment against the Crown Directing payment of money.

No execution shall issue on a judgment against the Crown for the payment of money. Where in any proceeding there may be a judgment against the Crown directing the payment of money, for costs or otherwise, the Judge may, on application, certify to the Minister of Finance the tenor and purport of the judgment, and such certificate shall be by the Registrar sent to or left at the office of the Minister of Finance.

As amended by Rule 22 of the General Order of May 1st, 1895.

The certificate of judgment referred to in the above Rule will not be issued until after the expiry of thirty days from the delivery of the judgment, unless a declaration to the effect that the unsuccessful party does not intend appealing, be filed of record.

Notice of appeal must be given to the Registrar of the Exchequer Court by the party appealing. See Rule 262.

The following form of certificate to the Minister of Finance or Receiver General may be used :—

IN THE EXCHEQUER COURT OF CANADA.

Between

THE QUEEN on the information of the Attorney-General for the Dominion of Canada,

Plaintiff ;

AND

A. B. and C. D.,

Defendants.

To the Honourable the Minister of Finance and Receiver-General for the Dominion of Canada :

I hereby certify that on the.....day of.....A. D. ....., it was by the said Court ordered and adjudged that the above named defendants were entitled to recover from the above named plaintiff the sum of $..... with interest thereon at the rate of six per centum per annum from the..... day of.....A. D.,..... to the.....day of.....A. D.....(*the date of the judgment*), and the costs of the action, which have been taxed and allowed at the sum of..... (*if any other direction insert here*).

Dated at Ottawa this .....day of .....A.D. 18..

J. E. C.

See also form of similar certificate in actions instituted by Petition of Right, at the end of *The Petition of Right Act*, ante, p. 137.

195. RULE 167.*

Judgment for payment of money against any party other than Crown may be enforced by fi. fa. or sequestration.

A judgment or order for the payment of money against any party to a suit other than the Crown may be enforced by writs of *fieri facias* against goods, *fieri facias* against lands, or sequestration.

196. RULE 168.*

Judgment for payment of money into Court may be enforced by sequestration.

A judgment for the payment of money into Court may be enforced by writ of Sequestration.

E. O. xlii. R. 1.

See Form R. and Rule 221.

197. RULE 169.*

For recovery or delivery of possession of land by writ of possession.

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

E. O. xlii. R. 3.

See Rules 227 *et. seq.*

198. RULE 170.*

Where judgment for recovery of any property other land or money.

A judgment for the recovery of any property other than land or money may be enforced—

By writ for delivery of the property;

See Rule 229.

By writ of attachment;

See Rules 199, 200, 222 and 223.

By writ of sequestration.

E. O. xlii. R. 4.

For form of writ of delivery, see Schedule S.

For form of writ of sequestration, see Schedule R.

WRIT OF ATTACHMENT. The following form may be used:—

IN THE EXCHEQUER COURT OF CANADA.

Between

A. B., Plaintiff;

AND

C. D., Defendant.

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

To the Sheriff of .. Greeting.

WE COMMAND YOU to attach C. D., so as to have him before Us in Our Exchequer Court of Canada, wheresoever the said Court shall then be, there to answer to Us, as well touching a contempt which he, it is alleged, hath committed against Us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as Our said Court shall make in this behalf, and hereof fail not and bring this writ with you.

WITNESS the Honourable . . . . . Judge of Our Exchequer Court of Canada, at . . . . . this . . . . day of . . . . . in the year of Our Lord, one thousand eight hundred and . . . . . .

Registrar.

199. RULE 171.*

Where judgment requires the doing or abstaining from any act.

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

E.O. xlii. R. 5.

200. RULE 172.*

No attachment to issue to compel payment of money.

No writ of attachment or other writ or process against the person is to issue to compel the payment of money.

See Rule 223.

201. RULE 173.*

Meaning of terms "writ of execution" and "issuing execution against any party."

In these rules the term "writ of execution" shall include writs of *fieri facias* against goods and against lands, sequestration and attachment and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding rules shall be applicable to the case.

E. O. xlii. R. 6.

202. RULE 174.*

No execution to be issued without production of judgment.

No writ of execution shall be issued without the production to the officer by whom the same should be issued of the judgment upon which the writ of execution is to issue, or an office copy thereof shewing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the judgment creditor to execution.

E. O. xlii. R. 9.

See Rule 208. No writ of *fi-fa.* to issue before the expiry of 15 days from the date of entering the judgment.

203. RULE 175.*

Praecipe to be issued.

No writ of execution shall be issued without a *praecipe* being filed for that purpose.

E. O. xlii. R. 10.

204. RULE 176.*

When writ to be dated.

Every writ of execution shall bear date of the day on which it is issued.

E. O. xlii. R. 12.

205. RULE 177.*

Poundage fees and expenses of execution may be levied.

In every case of execution the party entitled to execution may levy the interest, poundage fees and expenses of execution over and above the sum recovered.

E. O. xlii. R. 13.

206. RULE 178.*

How writ to be endorsed.

Every writ of execution shall be endorsed with the name and residence of the attorney or solicitor who issues the same, and if issued through an agent the name and residence of the agent also.

E. O. xlii. R. 11.

207. RULE 179.*

Directions to sheriff on.

Every writ of execution for the recovery of money shall be endorsed with a direction to the sheriff or other officer to whom

the writ is directed to levy the money really due and payable and sought to be recovered under the judgment stating the amount, and also to levy interest thereon if sought to be recovered, at the rate of six per cent. per annum from the time when the judgment was entered up.

E. O. xlii. R. 14.

208. RULE 180.*

Writs of fi. fa. may be issued 15 days after judgment except in certain cases.

Every person to whom any sum of money or any costs shall be payable under a judgment, shall after the expiration of 15 days from the time when the judgment was duly entered, be entitled to sue out one or more writ or writs of *fieri facias* against goods and against lands to enforce payment thereof, subject nevertheless as follows:—

(a.) If the judgment is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period.

(b.) The Court or a Judge at the time of giving judgment or the Court or a Judge afterwards, may give leave to issue execution before, or may stay execution until any time after the expiration of the periods hereinbefore prescribed.

E. O. xlii. R. 16. See Rule 202.

As amended by Rule 23 of the General Order of May 1st, 1895.

209. RULE 181.*

Renewing writs.

A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, by leave of the Court or a Judge, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court bearing the date of the day, month and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his attorney, and bearing the like seal of the Court; and a writ of execution so renewed shall have effect, and be entitled to priority according to the time of the original delivery thereof.

E. O. xlii. R. 26.

The following form of renewal may be used:—

Writ renewed this.....day of October, A. D. 189.., in pursuance of leave given under order of the Honourable Mr. Justice.....bearing date the.....day of.....189..

Witness my hand and the seal of the Exchequer Court of Canada, at Ottawa, this.....day of .. ..A. D. 189..

L. A.,
Registrar.

210. RULE 182.*

Evidence of renewal

The production of a writ of execution or of the notice renewing the same, purporting to be marked with such seal as in the last preceding rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

E. O. xlii. R. 17

211. RULE 183.*

Execution may issue within six years.

As between the original parties to a judgment, execution may issue at any time within six years from the recovery of the judgment.

E. O. xlii. R. 18

212. RULE 184.*

After that time by leave of Court or Judge.

Where six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly. And such Court or Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties, shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or Judge may impose such terms as to costs or otherwise as shall seem just.

E. O. xlii. R. 19.

213. RULE 185.*

Every order of a Court or a Judge may be enforced in the same manner as judgment.

Every order of the Court or a Judge, whether in an action, cause or matter, may be enforced in the same manner, as a judgment to the same effect, and it shall in no case be necessary to make a Judge's order a rule or order of the Court before enforcing the same.

E. O. xlii. R. 20.

214. RULE 186.*

Enforcing order or judgment against person not being party to an action.

Any person not being a party in an action who obtains any order, or in whose favour any order is made, shall be entitled to

enforce obedience to such order by the same process as if he were a party to the action, and any person not being a party in an action against whom obedience to any judgment or order may be enforced shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to the action.

*E. O. xlii. R. 21.

215. RULE 187.*

Application for stay of execution.

Any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment upon the ground of facts which have arisen too late to be pleaded, and the Court or Judge may give such relief and upon such terms as may be just.

E. O. xlii. R. 22.

WRITS OF FIERI FACIAS.

216. RULE 188.*

Forms of writs of fi. fa.

Writs of *fieri facias* against goods and lands may be in the forms given in Schedule P. and shall be executed according to the exigency thereof.

217. RULE 189.*

What interests may be sold under such writs.

Any interest equitable as well as legal of an execution debtor in goods or lands may be sold under writs of *fieri facias*.

218. RULE 190.*

Lands not to be sold until after lapse of six months.

Lands shall not be sold under a writ of *fieri facias* until after the lapse of *six months* from the seizure by the sheriff, or other officer.

219. RULE 191.*

Lands and goods to be bound from delivery of writ.

Lands and goods respectively shall be bound for the purposes of execution from the date of the delivery of writs of *fieri facias* to the Sheriff or other officer.

220. RULE 192.*

Writ of venditioni exponas may issue, form of.

Upon the return of the Sheriff or other officer, as the case

may be, of "lands or goods on hand for want of buyers" a writ of *Venditioni Exponas* in the form in Schedule Q may issue to compel the sale of the property seized.

221. RULE 193.*

Sheriff to follow laws of his province as to mode of selling.

In the mode of selling lands and goods and of advertising the same for sale the Sheriff or other officer is, except in so far as the exigency of the writ otherwise requires or as is otherwise provided by these orders, to follow the laws of his Province applicable to the execution of similar writs issuing from the highest Court or Courts of original jurisdiction therein.

222. RULE 194.*

Writ of attachment to be executed according to exigency thereof.

A writ of attachment shall be executed according to the exigency thereof.

See Rule 198 and form thereunder.

Under the provisions of sec. 4 of ch. 154 R. S. C., the Judge may direct the prosecution of a person guilty of perjury before him and commit said person to be prosecuted at the next term of the Criminal Court; he may also permit him to enter into a recognizance conditioned for his appearance at said next term. The Judge may further require any person to enter into a recognizance conditioned to prosecute or give evidence against such person directed to be prosecuted.

For contempt of court respecting comments by newspaper on pending proceedings see *Crown Bank v. O'Malley*, 44 Ch. D. 649.

223. RULE 195.*

No writ of attachment to be issued without leave of Court or Judge.

No writ of attachment shall be issued without the order of the Court or a Judge.

See Rule 198 *et seq.*

WRIT OF SEQUESTRATION.

224. RULE 196.

When writ of sequestration may issue.

When any person is by any judgment or by any order of the Court or Judge directed to pay money into Court or to do any other act in a limited time, and after due service of such judgment or order refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment or order shall at the expiration of the time limited for the performance thereof be entitled without obtaining an order for that purpose

to issue a Writ of Sequestration against the estate and effects of such disobedient person.

E. O. xlvii. See Rule 196.

225. RULE 197.

Form and effect of.

Such Writ of Sequestration may be in the form given in Schedule R hereto, and it shall have the same effect as the Writ of Sequestration in use in Her Majesty's High Court of Justice in England has, and the proceeds of the sequestration, subject to the provisions of these Rules, may be dealt with in the same manner as the proceeds of Writs of Sequestration are dealt with according to the practice in that behalf, from time to time in force in Her Majesty's said High Court of Justice.

As amended by Rule 24 of the General Order of May 1st, 1895. The original Rule has been amended by substituting for the words "in use" in the last line but one thereof, the words "from time to time in force."

226. RULE 198.

Court or Judge may order proceeds of to be paid into Court.

The Court or a Judge may, in its or his discretion, order the proceeds of any writ of sequestration whether the same be lands, goods or other property to be sold and the money produced by the sale to be paid into Court.

WRIT OF POSSESSION.

227. RULE 199.*

When writ of possession may issue.

A judgment that the Crown or any other party do recover possession of any land may be enforced by Writ of Possession in manner heretofore used in actions of ejectment in the Superior Courts of Common Law in England.

E. O. xlviii R. 1. See Rule 197.

The following form of Writ of Possession may be used:—

IN THE EXCHEQUER COURT OF CANADA.

Between

A. B., Plaintiff;

and

C. D., Defendant.

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

To the Sheriff of.....

Greeting.

WHEREAS by a judgment of Our Exchequer Court of Canada, bearing

date the.....day of.....18...., (A.B. recovered), *or* (C. D. was ordered to deliver to) *or* (We recovered) possession of all that (*insert here description of land and premises*) with the appurtenances in your bailiwick: Therefore, We command you that you omit not by reason of any liberty of your County, but that you enter the same, and without delay you cause the said (A. B. *or* Us *when at the instance of the Crown*) to have possession of the said land and premises with the appurtenances. And in what manner you shall have executed this Our writ make appear to Us in Our said Court immediately after the execution hereof. And have you then there this writ.

WITNESS the Honourable....., Judge of Our Exchequer Court of Canada, at.....this..... day of.....in the year of Our Lord, one thousand eight hundred and.....and in the .....year of Our reign.

L. A.,
Registrar.

228. RULE 200.*

May issue on affidavit.

Where by any judgment any person therein named is directed to deliver up possession of any lands to the Crown or some other party, the party prosecuting such judgment shall without any order for that purpose be entitled to sue out a Writ of Possession on filing an affidavit shewing due service of such judgment, and that the same has not been obeyed.

E. O. xlviii. R. 2.

WRIT OF DELIVERY.

229. RULE 201.*

Writ of delivery.

A writ for delivery of any property other than land or money may be in the form in Schedule S hereto and may be issued and enforced in the manner heretofore in use in actions of *detinue* in the Superior Courts of Common Law in England.

E. O. xlix. See Rule 198.

CHANGE OF SOLICITORS.

230. RULE 48.*—(*May 1st*, 1895.)

Change of attorney or solicitor.

A party suing or defending by an attorney or solicitor shall be at liberty to change his attorney or solicitor in any action, cause or matter, without an order for that purpose, upon notice of such change being filed in the Office of the Registrar, and upon payment of his attorney's or solicitor's costs; but until such notice and some document evidencing such payment are filed, and a certified copy thereof served and left in the said office, the former attorney or solicitor shall be considered the attorney or solicitor of the party.

231. RULE 49.*—(*May 1st*, 1895.)

Death, etc., of attorney or solicitor.

Upon the attorney or solicitor of one of the parties ceasing to act as such, either in consequence of being appointed to a public office incompatible with his profession, or of suspension or death, notice must be given to the opposite party of the appointment of the new attorney or solicitor before the latter can proceed in the action. If the party who employed the deceased attorney or solicitor neglect to appoint a new one after notice, the opposite party may proceed in the action as if the party were his own attorney or solicitor.

E. O. vii. R. 44; Wilson's Judicature Act, p. 143, and C. C. P. L. C., Art. 200 *et seq.*

CHANGE OF PARTIES BY DEATH

232. RULE 202.*

Action not to be abated by marriage, &c.

An action shall not become abated by reason of the marriage, death or insolvency of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation or devolution of any estate or title *pendente lite*.

E. O. I. R. 1.

233. RULE 203.*

Addition of parties in certain cases.

In case of the marriage, death or insolvency or devolution of estate by operation of law, of any party to an action, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved in the action, order that the husband, personal representative, assignee, or other successor in interest, if any, of such party, be made a party to the action, or be served with notice thereof in such manner and form as hereinafter prescribed, and on such terms as the Court or Judge shall think just and shall make such order for the disposal of the action as may be just.

E. O. I. R. 2.

234. RULE 204.*

Continuation of action in case of assignment or change of estate or title.

In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the action may be continued by or against the person to or upon whom such estate or title has come or devolved.

E. O. I. R. 3.

235. RULE 205.*

Adding or changing parties in certain cases.

Where by reason of marriage, death or insolvency, or any other event occurring after the commencement of an action, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party to the action should be made a party thereto, or that any person already a party thereto shall be made a party thereto in another capacity, an order that the proceedings in the action shall be carried on between the continuing parties to the action, and such new party or parties may be obtained *ex parte* on application to the Court or a Judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence.

E. O. I. R. 4.

When there are several joint contractors and that the action is brought only against one of them, the defendant is entitled as of right to have his co-contractors joined as defendants. *Pilley v. Robinson*, L. R. 20 Q. B. 155, and cases therein cited.

236. RULE 206.*

Service of order for.

An order so obtained shall, unless the Court or Judge shall otherwise direct, be served upon the continuing party or parties to the action, or their attorneys or solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following Rules, be binding on the persons served therewith, and every person served therewith, who is not already a party to the action, shall be bound to file his defence thereto within the same time and in the same manner as if he had been served with a copy of the Information, Petition of Right, or Statement of Claim, as the case may be.

E. O. I. R. 5.

237. RULE 207.*

Application may be made to discharge or vary such order.

Where any person who is under no disability, or under no disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the action, shall be served with such order, such person may apply to the Court or a Judge to discharge or vary such order at any time within *twelve days* from the service thereof.

E. O. I. R. 6.

238. RULE 208.*

Where person served is under any disability.

Where any person being under any disability other than coverture, and not having a guardian *ad litem* appointed in the action, is served with any such order, such person may apply to the Court or a Judge to discharge or vary such order at any time within *twelve days* from the appointment of a guardian or guardians *ad litem* for such party, and until such period of *twelve days* shall have expired such order shall have no force or effect as against such last mentioned person.

E. O. L. R. 7.

INTERLOCUTORY ORDERS AS TO INJUNCTIONS, RECEIVERS AND PAYMENT INTO COURT.

239. RULE 209.*

Injunctions and receivers.

An injunction may be granted or a receiver appointed by an interlocutory order of the Court or a Judge in all cases in which it shall appear to the Court or Judge to be just or convenient that such order should be made, and any such order may be made *ex parte* or on notice, and either unconditionally or upon such terms and conditions as the Court or Judge shall think just.

1. *Injunction.*—On motion for an *interim* injunction to restrain the defendant company from allowing refuse water mingled with tar and ammoniacal water to be discharged from their works through their drains into the Harbour of St. John, N.B., it being shown that this state of things had been in existence for a number of years, that there was no fishing before the spring, and the allegation of injury being negatived by a number of affidavits, the court refused the motion upon the defendant company undertaking that no discharge of such water should take place except during the ebbing of the tide and at such time during such ebbing as the Common Council of the city might direct. Costs to defendants. *The Queen v. St. John Gas Light Co.*, January 23rd, 1891. (An injunction was subsequently ordered after trial. See 4 Ex. C. R. 326.)

2. *Injunction.*—An *interim* injunction being asked, and no urgency therefor being shown, the application was ordered to be continued until the hearing of the case upon the merits. *The Queen v. Thuot*, September 17th, 1891.

3. *Injunction.*—An information at the suit of the Attorney-General to obtain an injunction to restrain a defendant from doing acts that interfere with, and tend to destroy the navigation of a public harbour is a civil and not a criminal proceeding, and the Exchequer Court has concurrent original jurisdiction over the same under 50-51 Vict. ch. 16, Sec. 17. *The Queen v. Fisher*, 2 Ex. C. R. 365.

240. RULE 210.*

Conservatory orders.

The Court or a Judge may make an order for the preserva-

tion or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be paid into Court or otherwise secured.

E. O. lii. R. 1.

241. RULE 211.*

How money to be paid into Court.

Any party directed by any order of the Court or a Judge to pay money into Court must apply at the office of the Registrar for a direction so to do, which direction must be taken to the Ottawa Branch or agency of the Bank of Montreal, and the money there paid to the credit of the cause or matter, and after payment the receipt obtained from the Bank must be filed at the Registrar's Office.

242. RULE 212.*

Order for payment of money out of Court.

If money is to be paid out of Court an order of the Court or a Judge must be obtained for that purpose upon notice to the opposite party.

243. RULE 213.*

How money to be paid out of Court.

Money ordered to be paid out of Court is to be so paid upon the cheque of the Registrar, countersigned by a Judge.

MOTIONS AND OTHER APPLICATIONS TO THE COURT.

244. RULE 214.*

Sittings of Judge in Court.

A judge, when not elsewhere engaged, shall sit in open Court, at Ottawa, every Monday, or on the next juridical day in the event of any Monday being a holiday, for the purpose of hearing the argument of demurrers, special cases, motions for judgment, appeals from the report of the Registrar or other officer of the Court, and all other motions, applications and business which cannot be transacted by a Judge in Chambers.

As amended by Rule 25 of the General Order of May 1st, 1895.

245. RULE 215.*

Setting down of demurrers, special cases and motions.

Demurrers, special cases, motions for judgment, ordinary motions on notice and petitions are to be set down to be heard at

least *two days* before the hearing, unless the Court or a Judge shall otherwise order, and are to be called on in the order in which they may be set down.

A notice of motion should be filed at the time the motion is set down for hearing.

For form of præcipe setting down on demurrers see Schedule II.

246. RULE 216.*

Last rule not to apply to ex parte motions.

The last foregoing rule is not to apply to *ex parte* motions.

247. RULE 217.*

Application to be made to a Judge in Court by motion.

Where by these Rules any application is authorized to be made to the Court or a Judge in an action, such application if made to a Judge in Court, shall be made by motion.

E. O. liii. R. 1.

248. RULE 218.*

No rule or order to show cause to be granted except where authorized by these rules.

No rule or order to show cause shall be granted in any action, except in the cases in which an application for such rule or order is expressly authorized by these Rules.

E. O. liii. R. 2.

249. RULE 219.*

Motions to be on notice.

Unless authorized by these Rules to be made *ex parte* motions are to be on notice unless the Court or a Judge shall think fit in the interests of justice to dispense with notice.

E. O. liii. R. 3.

250. RULE 220.*

Notice to be served two clear days before hearing.

Unless the Court or Judge give special leave to the contrary there must be at least *two clear days* between the service of a notice of motion and the day named in the notice for hearing the motion.

E. O. liii. R. 4.

251. RULE 221.*

Proceedings where notice not given to proper parties.

If on the hearing of a motion or other application the Court or Judge shall be of opinion that any person to whom notice has

not been given ought to have or to have had such notice, the Court or Judge may either dismiss the notice or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or Judge may think fit to impose.

E. O. liii. R. 5.

252. RULE 222.*

Hearing of any motion may be adjourned.

The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or Judge shall think fit.

E. O. liii. R. 6.

253. RULE 223.*

Notice may be served without special leave in certain cases.

The Attorney-General, plaintiff or petitioner, shall, without any special leave, be at liberty to serve any notice of motion or other notice, or any petition or summons upon any defendant, who, having been duly served with the information, petition of right or statement of claim, has not answered within the time limited for that purpose.

E. O. liii. R. 7.

As amended by Rule 26 of the General Order of May 1st, 1895.

The original Rule has been amended by making it applicable to cases instituted by Statement of Claim.

See Rule 107.

254. RULE 224.*

May be served with or after filing of information, petition of right or statement of claim.

The Attorney-General, plaintiff or petitioner may, by leave of the Court or a Judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the information, petition of right, or statement of claim or at any time after a service of the information, petition of right or statement of claim, and before the time limited for the answer of such defendant.

E. O. liii. R. 8. See Rule 31.

APPLICATION AT CHAMBERS.

255. RULE 225.*

Application at Chambers.

Every application to a Judge at Chambers authorized by these rules shall be made in a summary way by summons,

E. O. liv. R. 1. For form of summons see *ante* p. 265.

Every summons must be served two clear days before the return thereof, unless in any case it shall be otherwise ordered. E. O. liii. R. 4. Wilson's Judicature Act, 394.

256. RULE 226.*

Judge may rescind his own order.

Any Judge may rescind his own order by an order made in Chambers.

COSTS.

257. RULE 227.*

Costs may be awarded against the Crown.

Costs may be awarded against the Crown, subject to the provisions of these rules, that no execution shall issue on a judgment or order for payment of money by the Crown.

258. RULE 228.*

Provisions as to costs.

The costs, of and incident to all proceedings in the said Exchequer Court, shall be in the discretion of the Court or a Judge and shall follow the event unless otherwise ordered. The Court or a Judge may also direct the payment of a fixed or lump sum in lieu of taxed costs.

E. O. lv. As amended by Rule 27 of the General Order of May 1st, 1895.

The original Rule has been amended by placing the question of costs entirely in the discretion of the Court or Judge and by conferring upon the same the power of allowing a lump sum in lieu of taxed costs.

This last provision will, obviously, prove very satisfactory in interlocutory matters, whereby the sometimes vexed question of costs will be greatly simplified. The same practice prevails on the Admiralty side of the Court.

259. RULE 229.*

How to be taxed.

All costs between party and party shall be taxed pursuant to the tariff contained in Schedule T to be annexed to these orders and such taxation shall be by the Registrar in person, and shall not be delegated to any other officer of the Court except in the unavoidable absence of the Registrar from illness or any other cause, when the taxation shall be before the officer appointed by the Court to perform the Registrar's duties in his necessary absence.

Security for costs.—No special rule as to security for costs has been made by these General Orders; but in *Wood v. The Queen* (7 Can. S. C. R. 631) it was held that an application for security for costs in this Court must be made before the time allowed for filing the defence has expired, except under special circumstances. See sec. 28 of the *Exchequer Court Act* and notes thereunder, *ante* p. 93.

TAXATION OF COSTS.

See notes under Rule 156, *ante* p. 278 for the practice to be followed on taxation.

The Registrar, in the exercise of his discretion as taxing master, has the power to tax two Counsel fees up to $50 each, but the number of Counsel and their fee may be increased by the Court or Judge, and the fiat for such increase is usually obtained upon an application made in Chambers at the close of the taxation.

Under the provisions of 52 Vict., ch. 13, sec. 31, the costs of and incident to any proceedings under *The Expropriation Act*, are in the discretion of the Exchequer Court, which may direct the whole or any part thereof to be paid by the Crown or by any party to such proceedings.

Costs may be awarded to the suppliant in a Petition of Right under the provisions of section 11 of "*The Petition of Right Act.*"

Provisions are also made under section 17 of "*The Exchequer Court Act*" for the payment of costs awarded to any person against the Crown

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1. *Quantum meruit.* According to the law of the Province of Quebec, a member of the Bar, in the absence of special stipulation, can sue for and recover on a *quantum meruit* in respect of professional services rendered by him, and may lawfully contract for any rate of remuneration which is not *contra bonos mores*, or in violation of the rules of the Bar.

Where a member of the Bar had been retained by the Government as one of their Counsel before the Fisheries Commission sitting in Nova Scotia, *held*, that in the absence of stipulation to the contrary, express or implied, he must be deemed to have been employed upon the usual terms according to which such services are rendered, and that his *status* in respect both of right and remedy was not affected either by the *lex loci contractus* or the *lex loci solutionis*. *The Queen v. Doutre*, 9 App. Cas. 745.

2. *No tariff between attorney and client.* There being no tariff as between attorney and client in the Exchequer Court of Canada, an attorney has the right in an action for his costs, to establish the *quantum meruit* of his services by oral evidence. *Bossé v. Paradis*, 21 Can. S. C. R. 419. See also *Boak v. Merchants Mar. Ins. Co., Cassels' Digest*, 677.

3. *Costs—When disallowed.*—Where the amount demanded in the statement of claim, as compensation for lands expropriated, was extravagant and such amount was insisted on at the trial, the court, although awarding an amount in excess of what was tendered, refused to give costs to claimant. *McLeod v. The Queen*, 2 Ex. C. R. 106, referred to. *Baker v. The Queen*; and *Desrochers v. The Queen*, Feby. 6th, 1893.

4. *Costs—Chamber application.*—Where the Registrar allowed $2 fee on a Chamber application to extend the time for leave to appeal under section 51 of "*The Exchequer Court Act*," the Judge, on an application to review the taxation, refused to interfere with the Registrar's finding on the ground that the tariff of the Court did neither make provision for a higher fee nor gave him the power to increase it. *Clarke v. The Queen*, March 13th, 1893.

5. *Distraction of costs.*—In a suit in which the cause of action had arisen in the Province of Quebec and which had come before the Exchequer Court under sec. 59 of 50-51 Vict. c. 16, upon a report of the Official Arbitrators finding in favour of the claimant, and where the Crown had moved to confirm the report and had obtained judgment accordingly, with costs to the claimant on the proceedings before the Official Arbitrators, a motion for *distraction* of costs by claimant's Counsel being made several

months after the delivery of the judgment, and the Crown not opposing the application, the court held that the claimant was entitled to such *distraction* of costs. *The Water Works Co. of Three Rivers v. Dostaler*, 18 L. C. J. 198 referred to. Re *Libby v. The Queen*, February 24th, 1890.

6. *Costs refused when claim extravagant.* Where the tender is not unreasonable and the claim very extravagant, the claimant will not be given costs although the amount of the award exceeds somewhat the amount tendered. *McLeod v. The Queen*, 2 Ex. C. R. 106.

7. *Offer to abate cause of injury before action brought—Effect of.*—Where an offer to do certain work, which would abate an injury to suppliant's property caused by a public work, was made in writing by the Crown and its receipt acknowledged by the suppliant before action brought, but such offer was not repeated in the statement of defence (although filed subsequently pursuant to leave given), the Court, in decreeing the suppliant relief in the terms of the undertaking, refused costs to either party. *Fairbanks v. The Queen*, 4 Ex. C. R. 130. (This judgment was affirmed on appeal to the Supreme Court of Canada.)

260. RULE 230.*

Witness fees.

Witness shall be entitled to be paid the fees and allowances prescribed by Schedule U annexed hereto.

APPEALS TO THE SUPREME COURT.

261. RULE 231.

Repealed by General Order of February 12th, 1884.

262. RULE 43.* (May 1st, 1895.)

Notice to Registrar by party appealing.

Whenever an appeal is taken from a decision of the Exchequer Court to the Supreme Court of Canada in pursuance of the provisions of "The Exchequer Court Act," the appellant shall, within the time limited in Section 51 of the said Act for the deposit of security for costs on such appeal, or such further time as may be allowed under the provisions thereof, give notice in writing to the Registrar of the Exchequer Court, stating that he intends to prosecute an appeal; and if such appeal is thereafter discontinued or abandoned, the appellant shall give notice in writing to the Registrar of the Exchequer Court of the discontinuance or abandonment of such appeal.

This rule should be closely observed, because if the Registrar of the Exchequer Court is not informed that an appeal has been taken, he might transmit the certificate of judgment to the Receiver-General for the payment of the amount of the judgment, or might even issue a writ of execution against the party appealing.

263. RULE 232.*

Case in appeal how to be settled and what to contain.

The case, in appeal from the Exchequer Court to the Supreme Court, is, in case the parties differ about the same, to be settled by a Judge upon *one day's* notice of an appointment for that purpose to be served by the party intending to appeal on the opposite party, and it is to contain the pleadings and evidence or such parts thereof as the Judge may think material, and also a copy of any written judgment pronounced by the Judge whose decision is appealed from; or in case no written judgment has been pronounced a note showing the grounds and reasons for the decision.

Affidavits were read *pro* and *con* an application to re-open a trial for leave to adduce further evidence and issue a commission to Holland, and under such commission both parties were at liberty to adduce evidence; and upon an application to the Judge in Chambers for settling the case in appeal; *held* that such affidavits were no part of the evidence of record and accordingly they could not form part of the case in appeal. *DeKuyper v. Van Dulken*, April 12th, 1894.

For information as to what the case in appeal to the Supreme Court of Canada shall contain see Cassels' Practice, S. C. C. pp. 34 and 101, and for rules governing Exchequer appeals see Ibid., p. 125.

Form of order settling case.

(Heading.)

Upon the application of the plaintiff (*or* defendant, *as the case may be*) to settle the Case in Appeal to the Supreme Court of Canada, and upon hearing Counsel for the plaintiff and the defendant,

I do order that the Case in Appeal herein shall be composed of and comprise the following documents and papers, to wit:—

1. The Petition of Right.
2. Statement in Defence.
3. Reply.
4. Suppliant's exhibits 1, 2 and 3.
5. Respondent's exhibits A, B and C.
6. Evidence at trial.
7. Judgment.
8. Reasons for judgment.
9. Order settling case.
10. Certificate of Registrar.
11. Etc., etc.

Dated at Chambers, this day of A.D. 189 .

J. E. C.

AGENTS AND SERVICE OF PAPERS.

264. RULE 233.*

The Agent's Book.

There is to be kept in the Registrar's Office a book of the said Exchequer Court to be called the Agent's Book, in which

may be entered the names of persons residing at the City of Ottawa, and entitled to practice in the said Court who are to act as agents for attorneys and solicitors residing in other places.

By sections 12, 13 and 14 of 50-51 Vict., ch. 16, the class of persons who are entitled to practice before the Exchequer Court of Canada, is clearly defined. See *ante* p. 72.

In *Wallace v. Barkner* (Cassels' Digest, 669) it was intimated by the Court that conducting business with the Registrar's Office by correspondence is an irregular practice. An agent should be appointed at the time of the institution of an action. And under a ruling of the late Chief Justice, Sir William Ritchie, it was decided that (Cassels' Digest, 669) when the principal does not himself enter in the Agents' Book the name of his agent, a written authority must be filed with the Registrar. The authority may be either general or limited to any particular case, and the following form may be used:

Place.....

To Date.....

A. B.,

Barrister, Ottawa.

We hereby authorize you to enter your name as our agent in the Agents' Book of the Exchequer Court of Canada and to act as such agent in said Court.

C. D.,

Solicitor, etc., etc.

Any authority may be revoked and cancelled by a subsequent authority to that effect.

The omission to appoint an agent may lead to inconvenience in the progress of an action. It is true that Rule 235 permits, in cases where no agents are appointed, service of certain documents to be effected by posting copies of such documents in the office of the Registrar at Ottawa, but for reasons too obvious to require explanations, it is desirable that solicitors residing out of Ottawa should be represented in all proceedings before the Court by duly qualified agents.

The Supreme Court of Canada refused to hear a Counsel belonging to the State of New York, U. S. *Halifax City Ry. Co. v. The Queen*, Cassels' Digest, 679.

265. RULE 234.*

When the party appears in person.

Any party to any action or suit or other proceeding not residing at the said City of Ottawa, who appears in person, may also enter in the said book some place within the limits of the said city at which papers may be left for service upon him and which shall be called his address for service.

A party appearing in person might be allowed his costs as between party and party, but he will be refused all Counsel fees.—A Counsel fee was refused to respondent an advocate who argued an appeal in person before the Supreme Court of Canada. *Valin v. Langlois*. Cassels' Digest, 677.

266. RULE 235.*

Service in case of neglect to enter name.

In case the attorney or solicitor in any action, suit or other proceeding, shall have neglected to enter the name of an agent, or a party appearing in person to enter an address for service in the said book,papers not requiring personal service may be served by affixing them in the office of the Registrar in some conspicuous place therein.

WRITS.

267. RULE 236.*

Writs.

All writs shall be prepared in the office of the Attorney-General or by the attorney or solicitor suing out the same, and the name and address of the attorney or solicitor suing out the same shall be endorsed on such writ, and every such writ shall before the issuing thereof be sealed at the office of the Registrar and a *præcipe* therefor shall be left at the said office, and thereupon an entry of issuing such writ, together with the date of sealing and the name of the attorney or solicitor suing out the same, shall be made in a book to be kept in the Registrar's office for that purpose, and all writs shall be tested of the day, month and year when issued.

Rules regulating procedure in suits by English information. Rule xviii.

268. RULE 237.*

Subpœnas.

Subpœnas to witnesses may be in the form set forth in Schedule V to these orders annexed.

Where eleven witnesses had been subpœnaed for trial and eleven original subpœnas taken out, and one original used for each of them, notwithstanding the fact that the witnesses all resided in the same city or in the neighbourhood, and where also an affidavit of service had been given in respect of each witness, the Registrar, on taxation, refused to allow more than one subpœna and one affidavit for every three witnesses. *The Queen v. Flinn*, January 5th, 1895.

See Wilson's Judicature Acts, 6th Edn., p. 316.

E. O. xxxvii. R. 29.

269. RULE 238.*

Writs in revenue causes how to be tested and returned.

All writs in revenue causes are to be tested of the date on which they issue, and shall be made returnable immediately after the execution thereof, or on a day certain to be fixed by a Judge

of the Court; and all necessary alterations may be made in the forms of writs in revenue causes to adapt them to the law and practice of the Court; and the Judge of the Court in granting his fiat for any such writ may settle the terms and form in which the writ shall issue.

As amended by Rule 2 of the General Order of February 12th, 1884.

270. RULE 239.*

Writs may be amended.

Any writ may at any time be amended by order of the Court or Judge upon such conditions and terms as to costs and otherwise as may be thought just, and any amendment of a writ may be declared by the order authorizing the same to have relation back to the date of its issue or to any other date or time.

RECOGNIZANCES.

271. RULE 240.*

Recognizances.

Recognizances in revenue and all other causes may be taken and acknowledged before any Commissioner or other officer having authority to take recognizances of bail in the Supreme and Exchequer Courts.

Under sec. 44 of *The Exchequer Court Act*, Commissioners for administering oaths in the Supreme Court and in the Exchequer Court of Canada are empowered to take all recognizances in this court.

272. RULE 241.*

May be on paper.

Recognizances may be prepared on paper.

OFFICERS OF THE COURT.

273. RULE 242.*

Registrar's office hours.

The Registrar is to keep his office open each day except Sundays and holidays, from 10 in the forenoon until 4 o'clock in the afternoon, and all officers of the Court are to be in attendance during those hours.

274. RULE 243.*

Registrar's office hours in vacation.

During vacation the Registrar's office is to be kept open each juridical day from 11 in the forenoon to 12 o'clock, noon.

275. RULE 244.*

Books to be kept in Registrar's office.

There are to be kept in the Registrar's office all books necessary and proper for recording and entering all proceedings in Court and Chambers, and in which all judgments, reports, orders, rules, filings of pleadings, and other papers are to be entered.

276. RULE 245.*

Registrar's ministerial powers.

The Registrar shall have power in revenue causes to do any ministerial act which the Queen's Remembrancer in Her Majesty's late Court of Exchequer in England could have done in the same class of cases, and when any proceedings in such cases in the said Court of Exchequer were required to be taken in the office of the Queen's Remembrancer the same proceedings may be taken here in the office of the Registrar.

For information in respect of the Queen's Remembrancer's office, see Introduction, *ante* p. 29.

277. RULE 246.*

Sheriff's fees.

Sheriffs and Coroners shall be entitled to the fees and poundage prescribed by Schedule W to be hereto annexed.

See Rules 218, 221, 222, and sec. 41 of "*The Exchequer Court Act*."

By sec. 43 of chap. 16, 50-51 Vict., it is enacted that the Sheriffs of the respective counties or divisions, throughout the Dominion of Canada, shall be deemed and taken to be ex-officio officers of the Exchequer Court of Canada, and shall perform the duties and functions of sheriffs in connection with the said Court; and in any case where the sheriff is disqualified, such duties and functions shall be performed by the coroners of the county or district.

Pursuant to Orders in Council, of the 19th December, 1876, and 7th June, 1883, the sheriff shall receive:—(1) For his own remuneration the sum of $5 for each day upon which his attendance on the Exchequer Court of Canada is required by notice in writing from the Registrar of the said Court, under direction from the Court or Judge and actually given:—(2) For constables, the amount disbursed not exceeding the rate of $1,50 each for each day on which they are necessarily and actually engaged in attendance on the said Court; the number allowed being according to circumstances and as may be directed in writing by the Registrar of the said Court under authority given by the Court or Judge.

The Sheriff's account shall be accompanied by vouchers, and shall be certified by the Sheriff and also by the Registrar of the Court according to the following form, viz:—

IN THE EXCHEQUER COURT OF CANADA.

SHERIFF'S ACCOUNT.

Under O. C. 7th June, 1883, *and* 50-51 *Vict.*, *Chap.* 16, *Sec.* 43.

The GOVERNMENT OF CANADA.

TO THE SHERIFF OF..... ....Dr.

Province of .....

DATE 18....		$	CTS.
	To actual attendance in person or by deputy on Judge .....at the trial of the causes mentioned below..... .....days at $5.00 per day... ....Constables at $1.50 each per day for each day necessarily and actually engaged in attendance during the sittings of the Court, in all.....days		
	Names of Constables so attending. / No. of days.		
	.... /		
	.... /		
	.... /		
	.... /		
	The causes tried were the following, viz.:		
	....		
	....		
	....		
	....		
	....		
		$	

Please forward this account to the Registrar, Exchequer Court of Canada, Ottawa.

I CERTIFY that the above Account amounting to $.....is correct.

....

Sheriff.

I CERTIFY that I have laid this account before Mr. Justice..... .. and I have examined it and believe it to be correct.

.....

Registrar.

278. RULE 33.*—(*May 1st*, 1895.)

Bailiff's fees.

Bailiffs who serve any process or paper by direction of any party to any cause or matter, shall not be paid the fees prescribed for sheriffs and coroners, but the fee or fees allowed to bailiffs for a like service in the Superior Court of the Province in which the service is made.

This new rule has been introduced by Rule 33 of the General Order of May 1st, 1895.

VACATIONS.

279. RULE 247.*

Christmas Vacation.

There shall be a vacation at Christmas, commencing on the 15th of December, and ending on the 8th of January.

280. RULE 248.*

Long Vacation.

The long vacation shall comprise the months of July and August.

COMPUTATION OF TIME.

281. RULE 249.*

Computation of Time.

In all cases in which any particular number of days not expressed to be clear days, is prescribed by the foregoing rules, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless such last day shall happen to fall on a Sunday or on a day appointed by the Governor-General for a public fast or thanksgiving, or any other legal holiday or non-juridical day, as provided by the statutes of the Dominion of Canada.

Where anything is required to be done "forthwith" the word "forthwith" must be construed with regard to the object of the provision and circumstances of the case. *Ex parte Lamb*, 19 Ch. D. 169.

282. RULE 250.*

Months to be calendar months.

Where by these rules, the time for doing any act or taking any proceeding is limited by months, not expressed to be lunar months, such time shall be computed by calendar months.

E. O. lvii. R. 1.

A calendar month, when not exactly coterminous with a given calendar month, is from the day of commencement (reckoning that day) to and

inclusive of the day in the succeeding month immediately preceding the day corresponding to the day of commencement. *Migotti v. Colvill*, 4 C. P. D. 233, and *Freeman v. Read*, 11 W. R. 802, referred to. *Wright v. Leys*, 16 Ont. P. R. 354.

283. RULE 251.*

Certain days not to be computed.

Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, or a day appointed as aforesaid for a public fast or thanksgiving, or any other non-juridical day or legal holiday, shall not be reckoned in the computation of such limited time.

E. O. lvii. R. 2.

284. RULE 252.*

Where time for taking any proceeding expires on a Sunday or a day on which office is closed.

Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

E. O. lvii. R. 3.

Under the provisions of section 26 of *The Interpretation Act* the expression "holiday" includes Sundays, New Year's Day, the Epiphany, Good Friday, the Ascension, All Saints' Day, Conception Day, Easter Monday, Ash Wednesday, Christmas Day, the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning sovereign, Dominion Day, Labour Day, the first Monday in September, (57-58 Vict. ch. 55) and any day appointed by proclamation for a general fast or thanksgiving.

285. RULE 253.*

No pleadings to be amended or delivered in long Vacation.

No pleadings shall be amended or delivered in the long vacation, unless directed by the Court or a Judge.

E. O. lvii. R. 4.

286. RULE 254.*

Long vacation not to be reckoned in computation of time.

The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these rules for filing, amending or serving any pleading, unless otherwise directed by the Court or a Judge.

E. O. lvii. R. 5.

287. RULE 255.*

Powers of Court or Judge as to enlarging or abridging time.

The Court or a Judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed or allowed.

E. O. lvii. R. 6.

The English rule corresponding to the above is substantially the same, and for cases decided thereunder see *Annual Practice*, 1893, pp. 1024, 1025 and 1026; *Wilson's Judicature Acts*, 6th Edn. p. 469.

As regards cases falling within the application of the above rule, the various decisions must be regarded as instances of the exercise of the discretion vested in the court, and not as laying down any fixed and binding rule. See per Ld. Selborne in *Carter v. Stubbs* 6 Q.B.D. 119.

GENERAL PROVISIONS.

288. RULE 256.*

Formal objections not to prevail.

No proceeding in the said Court shall be defeated by any merely formal objection.

Provisions of a similar nature are also made by section 95 of the Supreme and Exchequer Courts Act, which reads as follows:—"No informality in the heading or other formal requisites of any affidavit, declaration or affirmation, made or taken before any person under any provision of this or any other Act, shall be an objection to its reception in evidence in the Supreme Court or the Exchequer Court, if the Court or Judge before whom it is tendered thinks proper to receive it; and if the same is actually sworn to, declared or affirmed by the person making the same before any person duly authorized thereto, and is received in evidence, no such informality shall be set up to defeat an indictment for perjury."

289. RULE 257.*

Effect of non-compliance with rules.

Non-compliance with any of these rules shall not render the proceedings in any action void unless the Court or a Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit.

E. O. lix.

290. RULE 258.

Repealed by Rule 37 of the General Order of May 1st, 1895.

INTERPRETATION.

291. RULE 259.*

In the preceding rules the term "a Judge" means any Judge of the said Exchequer Court transacting business out of Court.

292. RULE 260.*

In the preceding rules the following words have the several meanings hereby assigned to them over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction, that is to say:—

1. Words importing the singular number, include the plural number, and words importing the plural number include the singular number.
2. Words importing the masculine gender, include females.
3. The word "party" or "parties" and words "Plaintiffs" and "Defendants" include a body politic or corporate, and also Her Majesty and Her Majesty's Attorney-General.
4. The word "affidavit" includes affirmation.
5. The words "Revenue Causes" include the several classes of cases mentioned in Section 58 of the said Act.
6. The words "Non-revenue Causes" include the several classes of cases mentioned in Section 59 of the said Act as well as a Petition of Right.
7. The word "Petitioner" used alternatively with the words "Attorney-General" and "Plaintiff," shall mean the Petitioner in any Petition of Right.
8. The word "action" shall include a suit or proceeding by information by the Attorney-General as well as a Petition of Right or an action by a private suitor.
9. The expression "plaintiff" occurring in any rule of the Exchequer Court of Canada, includes the Crown or the party prosecuting any proceeding, and the suppliant in a petition of right.
10. The expression "defendant" occurring in any rule of the Exchequer Court of Canada, includes the Crown or the party defending any proceeding, and the respondent in a petition of right.

By Rule 34 of the General Order of May 1st, 1895, the above Rule has been amended by adding thereto paragraphs nine and ten.

RULES APPLICABLE TO CAUSES, IN WHICH CAUSE OF ACTION HAS ARISEN IN PROVINCE OF QUEBEC.

293. RULE 261.*

Rules applicable to Province of Quebec.

Rules numbered 1 to 27, both inclusive, 29, 57 to 65 both inclusive, 78 to 157 both inclusive, 159 to 195 both inclusive, 199 to 257 both inclusive, 259 and 260 of the Rules and Orders made on the 4th day of March, 1876; and the Rules and Orders respectively made on the 25th day of April, 1876; on the 28th day of February, 1877; on the 12th day of February, 1884; and also all the General Rules and Orders made since the 1st day of October, 1887, bearing the following dates respectively:—On the 7th March, 1888; on the 15th December, 1888; on the 12th January, 1891; on the 13th November, 1891; on the 5th December, 1892; on the 8th February, 1894; and also these present Rules and Orders (May 1st, 1895), shall apply to any actions in which the cause of action arises in the Province of Quebec.

As amended by Rule 35 of the General Order of May 1st, 1895.

The above Rule has been amended by making applicable to the Province of Quebec a number of rules respecting practice and procedure, which, up to the 1st May, 1895, did not so apply. Great care has, however, been taken to avoid interfering with any rule respecting the law of evidence or with pleadings in dealing with this amendment. The present rules of court respecting pleading and evidence are to a large extent similar in character to the English rules, and do not apply to cases in which the cause of action has arisen in the Province of Quebec; but for cases originating in that Province the law respecting evidence and pleading is regulated by the Codes in force in that Province.

The rule as amended will have a beneficial operation in behalf of suitors in the Province of Quebec. With the ample powers of amendment possessed by the Court under the rules now applicable to Quebec, it is impossible for the suitor to be prejudiced in any way or to have any of his rights defeated by any merely formal objection. See Rule 288.

PETITIONS OF RIGHT.

294. RULE 262.*—(*April 25th*, 1876.)

Rules applicable to Petitions of Right.

In pursuance of the provisions contained in the Petition of Right Act, 1876, it is ordered:

That the General Rules and Orders of the Exchequer Court made and promulgated on the 4th day of March, 1876, under and pursuant to the Petition of Right Act, Canada, 1875, and the Supreme and Exchequer Court Act, shall, so far as the same may be applicable, apply to Petitions of Right and other proceedings taken under the said Petition of Right Act, 1876.

See Rules 20, 49 and 50.

295. RULE 263.*—(*Feb. 12th*, 1878.)

Repealed by Rule 37 of the General Order of May 1st, 1895.

296. RULE 264.*

Acting Registrar at Ottawa and outside of Ottawa.

The Judge of the Court may from time to time, by general order, name and appoint a person at any place who shall, if the Registrar is not himself present thereat, act as Registrar of the Court at any sitting held at such place, and if no such appointment has been made, or if the person so appointed is not in attendance, may appoint any other person to act as Registrar at such sitting, and the person so acting as Registrar at any such sitting shall, for the purposes thereof, have all the powers of the Registrar.

During the absence from the City of Ottawa, of Louis Arthur Audette, Esquire, the Registrar of the Exchequer Court of Canada, or until further order, the functions and duties of the said Registrar, including the taxation of costs, shall be performed by Charles Morse, Esquire, Barrister-at-Law, an officer of this Court.

The original Rule 264 of September 10th, 1877, has been repealed by Rule 36 of the General Order of May 1st, 1895, and the foregoing Rule substituted therefor.

The Acting Registrar appointed under the above Rule to act outside of Ottawa is empowered to attend at trial, swear witnesses, take down the minutes of the sitting, etc., etc.; but for fuller information in respect of his duties and powers see Rules 152, 153, 154 and 155.

The Acting Registrar outside of Ottawa is not given the power to settle minutes of judgment or tax costs. The power of taxing costs under Rule 259, can only be delegated to an officer of the Court under special circumstances.

SCHEDULE A.

Form of Information.

8. (*Rule No. 6.*)

IN THE EXCHEQUER COURT OF CANADA.

BETWEEN

THE QUEEN on the information of the Attorney-General for the Dominion of Canada,

Plaintiff;

AND

JOHN SMITH,

Defendant.

Filed on the....day of....., A.D. 189 .

To the Honourable the Judge of the Exchequer Court of Canada :—

The Information of the Honourable....., Her Majesty's Attorney-General for the Dominion of Canada, on behalf of Her Majesty, sheweth as follows :—

(*Here state facts concisely.*)

CLAIM.

The Attorney-General, on behalf of Her Majesty the Queen claims as follows :—

(*a.*)

(*b.*)

(Signature)
E. B.,
Attorney-General.

As amended by Rule 2 of the General Order of the 1st day of May, 1895.

For form of information in expropriation cases see *ante* p. 149.

SCHEDULE B.

Form of Statement of Claim in Action on Postmaster's Bond.

11. (*Rule 7.*)

CANADA,
Province of.....
} In the Exchequer Court of Canada.

Filed 10th March 1876.

The Postmaster-General.

Plaintiff;

AND

A. B., C. D. and E. F.,

Defendants.

STATEMENT OF CLAIM.

1. The defendants, by their bond bearing date the day of A.D. 18 , became jointly and severally bound to our Sovereign Lady the Queen, in the sum of $. to be paid by the said defendants to our said Lady the Queen, subject to certain conditions thereunder written, upon fulfilment whereof the said bond was to become void.

2. One of the said conditions was and is that the said A. B. should, from time to time, and at all times when thereunto required, well and truly pay over to the Postmaster-General for Canada all sums as might or ought to be had and received by him for the sale and disposal of postage stamps and stamped envelopes, according to the value of the same respectively, entrusted to him for sale as Postmaster at, &c.

3. Postage stamps and stamped envelopes to the value of one thousand dollars were, on.....day of.....or thereabouts, entrusted to the said A. B., as Postmaster at, &c. for sale, and he has sold the same.

4. The said A. B. has paid over only $100 of the amount received by him on account of such sale, and refuses to account for the balance of the amount received by him for the sale of the said postage stamps and stamped envelopes, although he has been required to do so.

5. A statement of the account of the said A. B. as such Postmaster and attested as correct by the certificate and signature of the accountant of the Post Office of Canada, shows such balance of $900 to be due and unpaid by the said A. B; and, by virtue of the "Post Office Act of 1875," the plaintiff is entitled to demand judgment against the defendants for double the amount of the said balance.

The plaintiff claims—

1. Judgment against the said defendants, jointly and severally, for the sum of $1,800 and costs of suit.

SCHEDULE C.

Endorsement on Information or Statement of Claim.

31. (*Rule* 14).

Notice to the defendant within named :

You are required to file with the Registrar of the Exchequer Court of Canada at his office at the City of Ottawa, your plea, answer, exception or demurrer, or otherwise make your defence to the within information or statement of claim [*as the case may be*] within.....from the service hereof. If you fail to file your plea, answer, exception or demurrer, or otherwise make your defence within the time above limited, you are to be subject to have such judgment, decree or order, made against you as the Court may think just upon the informant's (or plaintiff's) own showing, and if this notice is served upon you personally you will not be entitled to any further notice of the further proceedings in the cause.

NOTE.—This Information (*or* statement of claim) is filed by A. B., &c., Her Majesty's Attorney-General for the Dominion of Canada, on behalf of Her Majesty (*or* by..... of the City of Ottawa, Solicitor, for the within named plaintiff).

Form C.C.

17. *Rule* 1. (*March 7th*, 1888.)

The claimant prays for a statement in defence on behalf of Her Majesty within four weeks after the date of service hereof, or otherwise that the statement of claim may be taken as confessed.

As amended in pursuance of Rule 39 of the General Orders of the 1st day of May, 1895, by calling the above form "C.C." in lieu of "A."

SCHEDULE D.

Advertisement in case of a Defendant not to be found.

45. (*Rule* 24.)

CANADA,
Province of ..... } In the Exchequer Court of Canada.

Between

A. B., *Plaintiff*;

AND

C. D., *Defendant.*

(*Copy Order*).

To the defendant C.D.:

Take notice that unless you file your plea, answer, demurrer, exception or otherwise make your defence pursuant to the requirements of the above order, the Court or Judge may direct that the case shall thereafter proceed as though you had filed a plea, answer or defence, traversing and denying the allegations contained in the information (*or statement of claim*) filed in this cause, and the action will thereafter proceed accordingly.

SCHEDULE E.

FORMS OF PLEADING.

Form of Information of Intrusion.

53. (*Rule* 32.)

CANADA,
Province of ..... } In the Exchequer Court of Canada.

Filed 10th March, 1876.

The Queen, on the information of the Attorney-General for the Dominion of Canada,

Plaintiff;

AND

JOHN SMITH,

Defendant.

To the Honorable the Chief Justice and Justices of the Exchequer Court of Canada:

The information of the Honorable..... Her Majesty's Attorney-General for the Dominion of Canada, on behalf of Her Majesty,

SHEWETH AS FOLLOWS:

1. That certain lands and premises situate in the City of Ottawa, in the County of Carleton, and Province of Ontario, and being, &c., on the first day of October, in the year of our Lord, 1875, and long before were and still ought to be in the hands and possession of Her Majesty the Queen.

2. That the Defendant on the said first day of October, in the year aforesaid in and upon the possession of the said Lady the Queen, of and in the premises, entered, intruded and made entry, and the issues and profits thereof coming received and had and yet doth receive and have to his own use.

CLAIM.

The Attorney-General, on behalf of Her Majesty the Queen, claims as follows:

1. Possession of the said lands and premises.

2. $.....for the issues and profits of the said lands and premises from the said first day of October, A.D. 1875, till possession shall be given.

(Signed)

.....

Form of Qui Tam Action.

CANADA,

Province of Ontario. } In the Exchequer Court of Canada.

Filed 10th March, 1876.

A. B. who sues as well for the Queen as for himself,

Plaintiff;

AND

C. D.,

Defendant.

STATEMENT.

1. By Section 3 of the Act passed by the Legislature of Canada in the 37th year of Her Majesty's reign, intitnled: "An Act to amend the Law relating to Bills of Exchange and Promissory Notes, and the stamps thereon," it is enacted, among other things, as follows: ["*Set forth the material part of the Section.*"]

2. The said C. D. who was and is a broker within the meaning of the said Section, received on or about the first day of February A.D. 1876, from one E.F. in payment of a debt due by the said E.F. to him the said C.D., a certain Bill of Exchange drawn by one G.H. upon and accepted by one K.L., for the sum of $300, and bearing date the twentieth day of January, A. D. 1876, which said Bill of Exchange was not duly stamped; and at the time the said C.D. so received the said Bill of Exchange he knew the same not to be duly stamped, but he did not on receiving the same affix thereto and cancel the proper stamps within the meaning of the Act thirty-first Victoria, chapter nine.

CLAIM.

The Plaintiff claims—

1. Judgment against the said Defendant for the said sum of $500, and costs of suit.

[*Title.*]

Statement of Defence.

1. The Bill of Exchange mentioned in the statement of claim, was duly stamped when received by the said C. D. [*Add any other grounds of defence—each one to be stated concisely in a separate paragraph.*]

[*Title.*]

Reply.

1. The Plaintiff joins issue upon the Defendant's statement of defence.

(*Add any other grounds of reply in concise separate paragraphs.*)

SCHEDULE F.

Form of Admission of Defence.

69. (*Rule* 48.)

CANADA,
Province of.....
} In the Exchequer Court of Canada.

Between

A.B. *Plaintiff*;

AND

C.D., *Defendant.*

The informant (or Plaintiff) confesses the defence stated in the.....paragraph of the Defendant's statement of defence [*or*, of the Defendant's further statement of defence].

SCHEDULE G.

Form of demurrer.

91. (*Rule* 67.)

CANADA,
Province of..... } In the Exchequer Court of Canada.

Between

A. B., *Plaintiff*;

AND

C. D., *Defendant*.

The Defendant [Plaintiff] demurs to the [Plaintiff's statement of complaint; *or*, Defendant's statement of defence, *or*, of set-off, *or*, of counter claim;] [*or* to so much of the plaintiff's statement of complaint as claims..... ...*or* as alleges as a breach of contract the matters mentioned in.....paragraph, *or as the case may be*], and says that the same is bad in law, on the ground that [*here states grounds of demurrer*].

SCHEDULE H.

Form of Præcipe for setting down Demurrer.

102. (*Rule* 78).

CANADA,
Province of..... } In the Exchequer Court of Canada.

A. B.

vs.

C. D.

Enter for the argument the demurrer of.....to .....X. Y., Solicitor for the Plaintiff (or &c.)

The following form may be used for præcipe setting down case for trial:—

(*Heading same as above.*)

Enter this action for trial at.....in the city of..... in the Province of ....., on the .... day of ....., 18.., at ... o'clock in the .... ..noon.

Dated at ....., this ..... day of ....., 189 .

SCHEDULE I.

Form of affidavit as to documents.

123. (*Rule* 96.)

CANADA,
Province of.....
} In the Exchequer Court of Canada.

Between

A. B., *Plaintiff*;

AND

C. D., *Defendant.*

I, the above named defendant, C. D., make oath and say as follows:

1. I have in my possession or power the documents relating to the matters in question in this suit, set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That (*here state upon what grounds the objection is made, and verify the facts as far as may be.*)

4. I have had, but have not now, in my possession or power, the documents relating to the matters in question in this suit, set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on (*state when*).

6. That (*here state what has become of the last mentioned documents, and in whose possession they now are*).

7. According to the best of my knowledge, information and belief, I have not now and never had in my possession, custody or power, or in the possession, custody or power of my solicitors or agents, solicitor or agent, or in the possession, power or custody of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy or extract from any such document, or of any other document whatsoever relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the first and second schedules hereto.

Sworn, etc., }

SCHEDULE K.

Form of notice to produce documents.

125. (*Rule* 98.)

CANADA,
Province of.....
} In the Exchequer Court of Canada.

A. B. *vs.* C. D.

Take notice that the (plaintiff or defendant) requires you to produce for his inspection the following documents referred to in your (statement of claim, or defence, or affidavit, dated the ..... day of .....A.D. .....). Describe documents required.

Dated at.....day of.....18..

X. Y.

Solicitor to the.....

To Z, Solicitor for.....

SCHEDULE L.

Form of notice to inspect documents.

126 (*Rule* 99.)

CANADA,
Province of..... } In the Exchequer Court of Canada.

A. B. *vs.* C. D.

Take notice that you can inspect the documents mentioned in your notice of the.....day of.....A.D.... (except the deed numbered.....in that notice), at my office, on Thursday next, the..... ...instant, between the hours of 12 and 4 o'clock.

Or that the (Plaintiff or Defendant) objects to giving you inspection of the documents mentioned in your notice of the .....day of. .....A.D.....on the ground that (*state the ground.*)

Dated.....day of....., 18....

X. Y.,

To Z., Solicitor for ..... *Solicitor for*.....

SCHEDULE M.

Form of notice to admit documents.

135. (*Rule* 108.)

CANADA,
Province of..... } In the Exchequer Court of Canada.

A. B. *vs.* C. D.

Take notice that the Plaintiff (or Defendant) in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the Defendant (or Plaintiff), his solicitor or agent, at.... ...on the..... day of....., between the hours of.....; and

the Defendant (or Plaintiff) is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed as they purport respectively to have been; that such as are specified as copies are true copies, and such documents as are stated to have been served, sent or delivered were so served, sent or delivered respectively, saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

To E. F., Solicitor (or agent) for Plaintiff (or Defendant.)

G. H. solicitor (or agent) for Plaintiff (or Defendant.)

Here describe the documents, the manner of doing which may be as follows:)

ORIGINALS.

Description of Documents.	*Dates.*
Deed of covenant between A. B. and C. D., first part, and E. F., second part	January 1, 1848.
Indenture of lease from A. B. to C. D.	February 1, 1848.
Indenture of re-lease between A. B., C. D., first part, &c.	February 2, 1848.
Letter, Defendant to Plaintiff	March 1, 1848.
Policy of insurance on goods by ship "Isabella," on voyage from Oporto to London	December 3, 1847.
Memorandum of agreement between C. D., captain of said ship, and E. F.	January 1, 1848.
Bill of Exchange for £100, at three months, drawn by A. B. on and accepted by C. D., indorsed by E. F. and G. H.	May 1, 1849.

COPIES.

Description of Document.	*Dates.*	*Original or Duplicate served, sent or delivered, when, how and by whom.*
Register of baptism of A. B. in the parish of X.	January 1, 1848.	
Letter, Plaintiff to Defendant	February 1, 1848.	Sent by general post, February 2, 1848.
Notice to produce papers	March 1, 1848.	Served March 2, 1848, on Defendant's attorney, by E. F., of, &c.
Record of judgment of the Court of Queen's Bench, in an action, J. S. *v.* J. N.	Trin. Term, 10 Vict.	

SCHEDULE N.

Form for setting down special case.

142. (*Rule* 115.)

CANADA,

Province of..... } In the Exchequer Court of Canada.

Between

A. B., *Plaintiff*;

AND

C. D. and others, *Defendants*.

Set down for argument the special case filed in this action on the ..... day of.....

Dated, etc.

X. Y., *Solicitor for*.....

SCHEDULE O. (*a*)

FORMS OF JUDGMENT.

1. Default of defence in case of liquidated demand.

184. (*Rule* 156.)

IN THE EXCHEQUER COURT OF CANADA.

Monday, the ..... day of..... A.D. 18..

Present,

The Honourable Mr. Justice .....

Between

A. B., *Plaintiff*;

AND

C. D. and E. F., *Defendants*.

The defendants not having filed any statement of defence;

This Court doth order and adjudge that the said plaintiff recover from the said defendants the sum of $..... and costs to be taxed.

2. Judgment in default of defence in action for recovery of land.

(*Heading as in Form* 1.)

No defence having been filed to the information herein;

This Court doth order and adjudge that the plaintiff recover possession of the land in the information mentioned.

(*a*) As amended by Rule 21 of the General Order of May 1st, 1895.

3. Judgment in default of defence after assessment of damages.

(*Heading as in Form* 1.)

The defendants not having filed a statement of defence, and the cause having been referred to .... to assess the damages which the plaintiff was entitled to recover, and the said ..... having, by his report, dated the ..... day of ....., 18 , reported that the said damages have been assessed at the sum of $.....;

This Court doth order and adjudge that the plaintiff recover the sum of $..... (and the costs to be taxed).

4. Judgment at trial.

(*Heading as in Form* 1.)

This action coming on for trial, at the City of ..... this day (or on the ..... day of ....., A.D. 189 .) before this Court, in the presence of counsel for the plaintiff and the defendants (*or if some of the defendants do not appear*, for the plaintiff and the defendant, C. D., none appearing for the defendants E. F. and G. H., although they were duly served with notice of trial, as by the affidavit of ....., filed on the ..... day of ....., appears), upon hearing read the pleadings herein (*and such other documents as may be material, or any examination taken before trial, by commission or otherwise*), and upon hearing what was alleged by Counsel on both sides, (*when case reserved add as follows:*—This Court was pleased to direct that this action should stand over for judgment, and the same coming on this day for judgment).

When judgment in favour of plaintiff.

This Court doth order and adjudge that the said plaintiff is entitled to recover from Her Majesty the Queen the sum of $..... and the costs to be taxed.

When action dismissed.

(*Same as above for the first part.*)

This Court doth order and adjudge that the said plaintiff recover nothing against the said defendant, and that the defendant recover against the plaintiff her (*or his*) costs of the action to be taxed.

5. Judgment at trial when action instituted by petition of right.

IN THE EXCHEQUER COURT OF CANADA.

Monday, the ..... day of ..... A.D. 18 .

Present,

The Honourable Mr. Justice.....

In the matter of the Petition of Right of

A. B., Suppliant;

AND

Her Majesty The Queen, Respondent.

The Petition of Right of the above named suppliant having come on for trial, at the City of ..... this day (*or as the case may be*, on the ..... day of ..... A.D. 18 .) before this Court in presence of Counsel for the suppliant and the respondent, upon hearing read the pleadings herein (*or such other documents as may be material, or any evidence taken before trial by commission or otherwise*) and upon hearing the evidence adduced at trial, and what was alleged by Counsel aforesaid (*when case reserved add:*—This Court was pleased to direct that this action should stand over for judgment, and the same coming on this day for judgment.)

When relief granted.

This Court doth order and adjudge that the said suppliant is entitled to recover from the said respondent the sum of $..... being the relief (or part af the relief, *as the case may be*) sought by his Petition of Right herein, and costs to be taxed.

When relief refused.

(*Same as above for first part.*)

This Court doth order and adjudge that the said suppliant is not entitled to the relief sought by his Petition of Right herein, and that the said respondent recover from the said suppliant Her costs herein, to be taxed.

6. Judgment on motion generally.

(*Heading as in Form* 1.)

This action having this day (*or as the case may be*, on the ..... day of ..... A.D. 18), come on before this Court on motion for judgment on behalf of .... and upon hearing Counsel for the ..... (*when motion reserved add:* this Court was pleased to direct that this matter should stand over for judgment, and the same coming on this day for judgment).

This Court doth order and adjudge that, etc.

SCHEDULE P.

Form of Writ of Fieri Facias.

CANADA, } **216.** (*Rule* 188.)

Province of..... } In the Exchequer Court of Canada.

Between

A. B., *Plaintiff*;

AND

C. D. and others, *Defendants.*

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith:

To the Sheriff of ....., *Greeting*:

We command you that of the goods and chattels of C. D., in your bailiwick, you cause to be made the sum of ..... and also interest thereon at the rate of six per centum per annum, from the .....day of ..... [*day of judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be*], which said sum of money and interest were lately before us in our Exchequer Court of Canada, in a certain action, [or certain actions, *as the case may be*], wherein A. B. is plaintiff and C. D. and others are defendants [or in a certain matter there depending, intituled, "In the matter of E. F.," *as the case may be*] by a judgment [or order, *as the case may be*] of our said Court, bearing date the .....day of .....adjudged [or ordered, *as the case may be*] to be paid by the said C. D. to A. B., together with certain costs in the said judgment [or order, *as the case may be*] mentioned, and which costs have been taxed and allowed, by the taxing officer of our said Court, at the sum of ....., as appears by the certificate of the said taxing officer, dated the .....day of ..... And that of the goods and chattels of the said C. D., in your bailiwick, you further cause to be made the said sum of .....[costs], together with interest thereon at the rate of .....per centum per annum, from the .....day of .....[*the date of the certificate of taxation. The writ must be so moulded as to follow the substance of the judgment or order*], and that you have that money and interest before us in our said Court immediately after the execution hereof, to be paid to the said A.B., in pursuance of the said judgment [or order, *as the case may be*], and in what manner you shall have executed this our writ, make appear to us in our said Court immediately after the execution thereof, and have there then this writ.

Witness the Honourable William Buell Richards, Chief Justice of our Exchequer Court of Canada, at Ottawa, this ..... day of .....in the year of our Lord one thousand eight hundred and ...., and in the .....year of our reign.

The Praecipe for a writ of fieri facias may be in the following form, which can be adapted for other writs also:

CANADA,

Province of ..... } In the Exchequer Court of Canada.

Between

A. B., *Plaintiff*;

AND

C. D., *Defendant.*

Seal a writ of *fieri facias* directed to the Sheriff of..... to levy of the goods and chattels of C. D..... ....the sum of$.....and interest thereon at the rate of $..... per centum per annum, from the.....day of.....[and $..... costs].

Judgment [or order] dated.....day of.....

[Taxing Master's certificate, dated.....]

X. Y., Solicitor for [*party on whose behalf writ is to issue*].

SCHEDULE Q.

Form of Writ of Venditioni Exponas.

220. (*Rule* 192.)

CANADA,
Province of..... } In the Exchequer Court of Canada.

Between

A. B., *Plaintiff*;

AND

C. D. and others, *Defendants.*

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith:

To the Sheriff of....., *Greeting*:

Whereas by our writ we lately commanded you that of the goods and chattels of C. D. [*here recite the fieri facias to the end*], and on the .....day of.....you returned to us, at our Exchequer Court of Canada aforesaid, that by virtue of the said writ to you directed, you had taken the goods and chattels of the said C. D., to the value of the money and interest aforesaid, which said goods and chattels remained on your hands unsold for want of buyers. Therefore we being desirous that the said A. B. should be satisfied, his money and interest aforesaid, command you that you expose for sale and sell, or cause to be sold, the goods and chattels of the said C. D., by you, in form aforesaid, taken, and every part thereof for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Exchequer Court of Canada immediately after the execution hereof, to be paid to the said A. B., and have there then this writ.

Witness the Honourable William Buell Richards, Chief Justice of our Exchequer Court of Canada, at Ottawa, the..... ....day of.....in the year of our Lord, one thousand eight hundred and..... and the.....year of our reign.

SCHEDULE R.

Form of Writ of Sequestration.

225. (*Rule* 197.)

CANADA,
Province of.... . } In the Exchequer Court of Canada.

Between

A. B., *Plaintiff*;

AND

C. D. and others, *Defendants.*

Victoria, &c.

To....., *Greeting:*

Whereas lately, in our Exchequer Court of Canada, in a certain action there depending, wherein A. B. is plaintiff and C. D and others are defendants [*or*, in a certain matter there depending, intituled, "In the matter of E. F., *as the case may be*], by a judgment [*or* order, *as the case may be*] of our said Court, made in the said action [*or* matter], and bearing date the.....day of.....187.., it was ordered that the said C. D. should [pay into Court, to the credit of the said action, the sum of.....*or, as the case may be*]. Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you full power and authority to enter upon all the messuages, lands, tenements and real estate whatsoever of the said C. D., and to collect, receive and sequester into your hands not only all the rents and profits of the said messuages, lands, tenements and real estate, but also all his goods, chattels and personal estate whatsoever, and therefore we command you that you do, at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements and real estate of the said C. D., and that you do collect, take and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels and personal estate, and detain and keep the same under sequestration in your hands until the said C. D. shall [pay into Court, to the credit of the said action, the sum of.....*or, as the case may be*] clear his contempt, and our said Court make other order to the contrary.

Witness, &c.

SCHEDULE S.

Form of Writ of Delivery.

229. (*Rule* 201.)

CANADA,
Province of..... } In the Exchequer Court of Canada.

Between

A.B., *Plaintiff;*

AND

C. D. and others, *Defendants.*

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

To the Sheriff of ..... *Greeting:*

We command you that without delay you cause the following chattels that is to say [*here enumerate the chattels recovered by the judgment, for the return of which execution has been ordered to issue*], to be returned to A. B., lately in our Exchequer Court of Canada recovered against C. D. [*or* C. D. was ordered to deliver to the said A. B.] in an action in our said Court.* And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said C. D., by all his lands and chattels in your bailiwick, so that neither the said C. D., nor any one for him do lay hands on the same until the said C. D. render to the said A. B. the said chattels; and in what manner you shall have executed this our writ make appear to us at our said Exchequer Court of Canada, immediately after the execution hereof, and have you there then this writ.

Witness the Honourable William Buell Richards, Chief Justice of our Exchequer Court of Canada, at Ottawa, the..... day of....., in the year of our Lord one thousand eight hundred and....., and the..... year of our reign.

The like, but instead of a distress until the chattel is returned, commanding the Sheriff to levy on the Defendant's goods the assessed value of it.

[Proceed as in the preceding form until the*, and then thus:] And we further command you that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said C. D., in your bailiwick you cause to be made..... [*the assessed value of the chattels*], and in what manner you shall have executed this our writ make appear to us at our Exchequer Court of Canada, at Ottawa, immediately after the execution hereof, and have you there then this writ.

Witness, &c.

SCHEDULE T.

(*As substituted by Rule* 28 *of the General Order of May* 1*st*, 1895, *for the original schedule.*)

EXCHEQUER TARIFF.

Fees and charges to be allowed to Counsel, Attorneys and Solicitors in the taxation of costs between party and party. **259.** (*Rule* 229.)

Instructions.

1. For informations, statements of claim and petitions of right..... $ 5 00

2. For special cases, demurrers and answers thereto.....	$5 00
3. To amend any pleading, when the amendment is proper and not occasioned by error or default.....	2 00
4. For brief, for moving, for injunction.....	2 00
5. For interrogatories and *viva voce* examinations of parties or witnesses.....	2 00
6. For special petitions or motions in interlocutory matters	2 00
7. For special affidavits, including affidavits on production, in the discretion of the Registrar.....	1 00
8. For brief in suits by information, statement of claim or petition of right in cause coming on for trial or hearing.....	2 00
9. To defend proceedings commenced by information, statement of claim or petition of right.....	5 00
10. To revive or add parties.....	2 00

The preparation of pleadings and other documents.

11. Drawing informations, petitions of right or statements of claim, not exceeding 20 folios.....	5 00
12. Drawing defence, answer or other pleading not specially mentioned, not exceeding 5 folios in length.....	2 00
13. Engrossing any pleading so drawn, for printer, or in case of pleading not required to be printed, engrossing a clear copy thereof, per folio.....	10
14. For examining and correcting the proof of any pleading or affidavit or other paper required to be printed, per folio.....	05
15. Preparing joinder of issue, and filing same.....	1 00
16. Suggestion as to the death of parties and the like....	1 50
17. Affidavit of service of information, statement of claim or petition of right.....	1 50
18. Special affidavit not exceeding 5 folios.....	1 50
19. Every bill of costs not exceeding 5 folios.....	2 00
20. Copies of all documents or papers, per folio.....	10

21. Notice of motion $1 50

22. Certificate to appoint guardian *ad litem* 1 50

23. Summons to attend Judge's Chambers 1 50

24. Notice for service out of jurisdiction 1 50

25. Advertisements to be signed by Registrar, not exceeding 5 folios in length 1 50

26. Every writ of mesne or final process, not exceeding 5 folios 2 00

27. Suing out subpœna ad testificandum 1 00

28. Suing out subpœna duces tecum 1.25

29 For every folio beyond the number provided for in any case, and for drawing or amending every other proceeding, notice, petition or paper in a cause requiring to be drafted, not herein specially provided for, per folio of necessary matter 20

(The above charge does not include engrossing, or copies to file and serve.)

Perusals.

30. For perusing the print of an information, petition of right, statement of claim or amended information, petition of right or statement of claim, not exceeding 20 folios 1 00

31. For every folio, exceeding 20 folios 05

32. For perusing an amended information, petition of right, or statement of claim when amended in writing 1 00

33. (The same rate as above for perusing answers in print, or amended answers in writing.)

34 To the attorney or solicitor for perusing interrogatories, not exceeding 20 folios 1 00

35. For every folio, exceeding 20 folios 05

36. (Perusing all special affidavits filed by opposite party, including, in the discretion of the Registrar, affidavits on production, and examinations of party, at the same rate.)

37.	For perusing copy of supplemental statement and copy of order to revive, each	$1 00
38.	In cases where pleadings or papers are printed, the amount actually and properly paid the printer is to be allowed, not exceeding per folio	30

Attendance.

39.	To inspect or produce for inspection documents pursuant to notice to admit or order for inspection;	
40.	On taxation of costs. Each, per hour	1 00
41.	To examine and sign admissions;	
42.	To obtain or give undertaking to defend. Each	1 00
43.	On a reference or examination of witnesses or parties, per hour;	
44.	On a summons at Judge's Chambers;	
45.	In Court on motion, per hour;	
46.	In Court on demurrer, special petition or application adjourned from Judge's Chambers, when set down for hearing or likely to be heard;	
47.	On consultation or conference with counsel, if Registrar think the same reasonable and proper;	
48.	On hearing or trial of any cause or matter, per hour;	
49.	To hear judgment when same adjourned;	
50.	For order made at Judge's Chambers, and get same entered. Each;	
51.	To settle draft of any judgment, decree or order;	
52.	To pay money into Court. Each	2 00
53.	Every other proper attendance	50

Briefs.

54.	For drawing brief, per folio, for original and necessary matter	20
55.	For drawing brief, per folio, for matter not original but necessary	10

56. Copy of documents, per folio..... $ 10

57. Copy of brief for second counsel, when fee taxed to him, per folio..... 10

(But nothing shall be allowed for any copy of any pleading included in such brief, or of any document which the Registrar thinks was not reasonably and necessarily included therein, and the Registrar may in any case in which he sees fit, allow a lump sum instead of, but not exceeding, the per folio allowance above provided for.)

Letters.

58. All necessary agency letters, in the discretion of the Registrar, (besides postage)..... 50

Counsel.

59. Fee on drawing or settling pleadings, and advising on evidence..... 5 00

60. Fee on motion in Court, not to exceed..... 10 00

61. Fee on argument of demurrer, not to exceed..... 20 00

62. Fee with brief on trial of issues or hearing, not to exceed..... 50 00

63. (No more than two counsel fees to be taxed without an order of a Judge.)

64. Fee on motion for judgment, not to exceed..... 20 00

65. (The above fees to Counsel may be increased by order of the Court or a Judge.)

Services.

66. For services on a party or witness, such reasonable charges and expenses as may be properly incurred.

Oaths and Exhibits.

67. To Commissioners for oaths..... 20

68. To the attorney or solicitor for preparing each exhibit..... 20

69. To Commissioners for marking each exhibit..... 10

Disbursements.

70. Besides the Registrar's fees, reasonable charges shall be allowed to attorneys and solicitors for necessary disbursements, and postage on services of notices, motions, subpœnas, translations, printing of the same, copies, and other incidental proceedings.

Plans and Surveys—Cost of.—The cost of plans and surveys of neighbouring properties made with the view of qualifying or briefing a surveyor as witness to give evidence at trial and where the plans were not filed of record, was refused by the Registrar as taxable between party and party, (*McGannon v. Clarke*, 9 O. P. R. 555, referred to).—The reasonable cost, however, of a plan of the premises expropriated and used at trial was allowed. On appeal to the Judge in Chambers to review the first finding and to increase the amount allowed for the plan last referred to, it was held that the Registrar had only exercised his discretion in the finding and the Judge refused to interfere with the same.—*The Queen v. Flinn*, January 5th, 1895.

71. In cases of special references, where, by order of the Court or a Judge, the enquiry is to be proceeded with at some place other than Ottawa, or when the referee does not reside at the place where the enquiry is made, he shall then be allowed his actual travelling expenses, and a per diem sustenance allowance of..... 4 00

72. For drafting report on reference, per folio..... 30

73. Per diem fee during the time employed on the reference..... 10 00

(To be increased by order of the Court or a Judge.)

74. In actions under $400, a deduction of one-third of the amount of the fees (other than disbursements) above allowed, shall be made by the taxing officer, unless otherwise ordered by the Court or a Judge.

75. In any case where the defendants sever in their defence, the plaintiff's attorney, counsel or solicitor shall receive, on each additional issue, one-half of the sum which he would have received had there been but one issue; the whole amount to be payable, in equal proportions, by the party or parties to each issue.

76. When the proceedings are carried on according to the practice of Her Majesty's Superior Court in the Province of Quebec, and where the foregoing tariff may not provide for, or be applicable to, any such proceedings, the fees shall be taxed according to the tariff from time to time in force in the said Superior Court.

SCHEDULE U.*

(*As amended by Rule* 29 *of the General Order of May* 1*st*, 1895.)

Fees and Allowances to witnesses.

260. (*Rule* 230).

To witnesses residing within three miles of the Court House, per diem (not including ferry and meals)..... $ 1 00

Barristers, attorneys and physicians when called upon to give evidence in consequence of any professional services rendered by them, or to give professional opinions, per diem..... 5 00

Engineers, surveyors (*a*) and architects, when called upon to give evidence of any professional services rendered by them, and to give evidence depending upon their skill or judgment, per diem..... 5 00

If the witnesses attend in one cause only, they will be entitled to the full allowance. If they attend in more than one cause they will be entitled to a proportionate part in each cause only.

When witnesses travel over three miles they shall be allowed expenses, according to the sum reasonably and actually paid, which in no case shall exceed 20 cents per mile one way.

SCHEDULE V.

(*As amended by Rule* 30 *of the General Order of May* 1*st*, 1895.)

(a.) Subpœna.

268. (*Rule* 237.)

IN THE EXCHEQUER COURT OF CANADA.

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

(a) For taxation of surveyor when heard as witness see R. S. C. ch. 54 sec. 123.

1. To
2.
3.
4. Greeting:

WE COMMAND YOU that all excuses ceasing, you and each of you, do personally be and appear before the.....at .....on the.....day of.....at.... o'clock in the.....noon, to testify the truth according to your knowledge in a certain cause depending in our Exchequer Court of Canada, wherein.....is.....and.....is .....,on the part of.....and hereof fail not at your peril.

WITNESS the Honourable.....Judge of Our Exchequer Court of Canada, at.....the..... day of.....in the year of Our Lord, one thousand eight hundred and.....and the.....year of our reign.

Registrar.

(b.) Subpœna duces tecum.

The same as the preceding form, adding before the words "and hereof fail not at your peril" the words "and that you bring with you and then and there produce before the said Judge (Registrar, Referee or Commissioner, *as the case may be*) the following documents, viz:—(*Here state the documents required to be produced*) and show all and singular those things which you know, or which the said paper writing doth import of, in or concerning the present cause now depending in our said Court."

(c.) Præcipe for Writ of Subpœna.

(*Title of case.*)

Seal Writ of Subpœna.....on behalf of .....
Dated the.....day of.....18..
(Signature)
Solicitor for.....

SCHEDULE W.

Sheriff's Tariff.

277. (*Rule* 246.)

EXCHEQUER COURT OF CANADA.

The following fees and allowances shall be taken and received by the Sheriff in suits in the Exchequer Court of Canada:

Every warrant to execute any process mesne, or final, directed to the Sheriff, when given to a Bailiff	$ 75
Arrest, when amount does not exceed $200	2 00
" " " $400	4 00
" " over $400	6 00
Bail or other Bond	2 00
Assignment of the same	1 00
Service of Process, *Scire Facias*, Writ of Revivor, Information, or Statement of Claim, each defendant, (no fee for affidavit of service in such cases to be allowed unless service made or recognized by the Sheriff)	1 50
Serving other pleadings, Subpœnas, Rules, Notices, or other papers (besides mileage)	75
For each *additional* party served	50
For each Summoner on Writ of *Scire Facias* per day, to be paid by Sheriff	1 00
Receiving, filing, entering and endorsing all writs, informations, statements, pleadings, rules, notices, or other papers, each	25
Return of all process and writs (except subpœna) informations, statements, pleadings, rules, notices, or other papers	50
Every search, not being a party to a cause or his attorney	30
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
Fee on striking jury	2 50
Serving each juror (besides mileage @ 13c. per mile)	50
Returning panel of jurors	1 00
Keeping and checking pay list of jurors' attendance, in each case	1 00
Every jury sworn or cause tried before a Judge	1 00
Poundage on executions and on writs in the nature of executions where the sum made shall not exceed $1,000, six per cent.	
When the sum is over $1,000 and under $4,000, three per cent., when the sum is $4,000 and over, one and a half per cent. in addition to the poundage allowed up to $1,000, exclusive of mileage, for going to seize and sell, and except all disbursements necessarily incurred in the care and removal of property.	
Schedule taken on execution or other process, including copy to defendant, not exceeding five folios	1 00
Each folio above five	10
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	1 50
Every necessary notice of sale of goods, in each suit	75
Every notice of postponement of sale, in each suit	25
The sum actually disbursed for advertisements required by law to be inserted in the *Official Gazette* or other newspaper.	

Executing writ of possession besides mileage	$6 00
Bringing up prisoner on attachment or *habeas corpus*, besides travel, *(a)* 20c. per mile	1 50
Actual and necessary mileage from the Court House to the place where service of any process, paper or proceeding is made, per mile	13
Seizing estate and effects on attachment against debtor	3 00
Removing or retaining property, reasonable and necessary disbursements and allowances to be made by order of the Court or a Judge.	
Presiding or attendance on execution of writ of enquiry or under any writ of escheat, or other writ of a like nature	5 00
Summoning each juror in such case	25
Bailiff's fee summoning jury, mileage per mile	13
Hire of room, if actually paid, not to exceed $2 per day.	
Mileage from the Court House to the place where writ executed per mile	13
Drawing bond to secure goods seized, if prepared by Sheriff	$ 1 50
Every letter written (including copy) required by party or his Attorney respecting writs or process, when postage prepaid	50
Drawing every affidavit when necessary and prepared by Sheriff	25
Giving possession of lands, exclusive of mileage and assistance	5 00
All necessary disbursements to surveyors and others for surveying the lands and giving possession, to be allowed to the Sheriff.	

Coroners.

The same fees shall be taxed and allowed to Coroners for services rendered by them in the service, executions and return of process, as allowed to Sheriffs for the same services and above specified.

Tariff of Fees to Crier.

The following fees shall be taxed to the Crier of the said Court:

Calling every case with or without a jury	50
Swearing each witness or constable	15
Proclamation and calling parties connected with proceedings other than witnesses or constables, each person	25
On each inscription for *enquête* in actions not contested	0

4th March, 1876.

The following form of proclamation may be used by the Crier when opening the Court, viz :—

Oyez ! Oyez ! Oyez ! All manner of persons who have anything to do with Her Majesty's Exchequer Court of Canada, draw near and give your attendance and you shall be heard. GOD SAVE THE QUEEN.

SCHEDULE X. (*a*)

(As substituted by Rule 31 of the General Order of May 1st, 1895, for the original schedule.)

The following fees shall be paid to the Registrar of the Exchequer Court of Canada.

1. On filing every information, statement of claim and petition of right	$2 00
2. On filing every plea, answer, demurrer and exception to above	10
3. On filing every document, proceeding or paper not specially provided for	10
4. On marking every exhibit filed at trial, on reference or on examinations	10
5. On sealing and issuing every writ (besides filing)	2 00
6. On certifying every office copy of information, statement of claim or petition of right, and affixing seal of the Court when necessary	2 00
7. On every writ of subpœna	1 00
8. Præcipe for writ of subpœna or any other præcipe not otherwise provided for	10
9. Amending every writ or other proceeding or paper	30
10. Every ordinary rule or order	50
11. Special rule or order, not exceeding six folios	1 00
12. Each additional folio	25
13. Every judgment or Court order, and entering the same	2 00
14. Taxing every bill of costs (besides filing), per hour	1 00
15. Every allocatur	1 00
16. Every reference, enquiry, examination or other special matter referred to the Registrar, for every meeting not exceeding one hour	1 00
17. Every additional hour or less	1 00
18. For every report made by the Registrar upon such reference, etc	1 00
19. On payment of money into Court, every sum under $200	1 00
20. On $200 to $400	2 00
21. On $400 and over	5 00
22. Receipt for money in margin of answer, plea, etc	25
23. Every other certificate required from Registrar (including any necessary search), and seal of the Court when necessary	1 00
24. Exemplification or office copy of proceedings, per folio	10

(A folio shall consist of 100 words.)

(*a*) All fees payable to the registrar are to be paid by means of stamps. See section 48 of 50-51 Vict. ch. 16.

The Clerk of the Court need not take any notice of a document transmitted to him without the necessary fee to pay for the filing of same. Parker v. Clarke, C.L.T., Vol. xiv. p. 32.

25.	Every search for special paper, or a general search in one cause	25
26.	Every search in any book	25
27.	Every affidavit, affirmation or oath administered by Registrar	25
28.	Every commission or order for examination of witnesses	1 50
29.	Entering or setting down any cause for trial or hearing on demurrer, special case, petition of right, information, statement of claim or otherwise	2 00
30.	Setting down a case by default	50
31.	Every fiat or summons	50
32.	Every appointment made by a Judge	50
33.	Every enlargement on application to Judge in Chambers or on return of summons or otherwise	25
34.	Every appointment for taxation of costs or otherwise made by Registrar	25
35.	Enlargement of same	10
36.	Comparing, examining and certifying transcript record (case) on appeal to Supreme Court of Canada.	5 00
37.	Comparing any document, paper or proceeding with the original on file or deposited in the Registrar's office, per folio	0 03
38.	On each opposition for payment or claim above $1,000,	2 50
	" " " $400, but under $1,000	1 60
	On each opposition for payment or claim of $400 or under	1 40
39.	On each opposition to secure charges to annul or withdraw;	
	In actions above $1,000	2 50
	" $400, but under $1,000	1 60
	In actions of $400 or under	1 40
40.	For preparing judgment of distribution	8 00
41.	For drawing *procès verbal* upon improbation	2 50
42.	On every deposition of every witness taken in writing (long hand), for every folio	10
43.	For taking down in writing, answers to interrogatories upon articulated facts	1 00
	If over ten folios, for each additional folio	10
44.	Approving or taking bond, or recognizance	4 00

297. RULE 32. * (*May* 1st, 1895.)

32. Rules 8, 9, 10 and 11 of the Exchequer Court of Canada, made by the General order of the 15th day of December, 1888, have been repealed by Rule 32 of the General Order of May 1st, 1895, and the following substituted therefor:—

Shorthand Writers.

1. Every shorthand writer employed under the authority of the Court, shall, if directed by the Judge, Registrar, Referee or

Commissioner before whom the examination of any witness is taken, or if requested by any party to the proceeding, furnish to such Registrar, Referee or Commissioner, four copies of the notes of evidence, one of which shall be handed to the Judge, one filed of record in the Court, and the others given to the plaintiff and defendant respectively when paid.

2. For taking and transcribing such examination or notes of evidence, there shall be paid to the Registrar, Acting Registrar, Referee or Commissioner, per folio .....$ 0 15

And if the copies are supplied daily the same may, in the discretion of the Registrar, be increased to, per folio..$ 0 20

If for any reason the evidence is not required to be transcribed, for each hour occupied by the examination ..$ 1 50

3. If such notes of evidence are furnished as hereinbefore provided by direction of the Judge, Registrar, Referee or Commissioner, the fee last mentioned shall be paid by the party who called the witness, but if furnished at the request of either party, then by such party.

4. If any fee herein mentioned is not paid by the party liable therefor it may be paid by any other party to the proceeding and allowed as a necessary disbursement in the cause, or the Judge may make such order in respect of such evidence and the disposal of the action or proceeding as to him seems just.

5. Any Acting Registrar, Referee or Commissioner to whom any such fee is paid shall forthwith transmit the same to the Registrar of the Court.

SCHEDULE Y.

Form of affidavit for writ of Immediate Extent in chief.

21. *Rule No.* 46.* (*May 1st*, 1895.)

IN THE EXCHEQUER COURT OF CANADA.

(*Heading as in Form* 1, *Schedule* 0.)

I, A. B. (*insert residence and occupation*), make oath and say as follows:—

1. I am (*state if he is an officer of the Crown, and in what capacity and under what authority he is acting herein*).

2. That the said defendant is indebted to the Crown in the sum of $....., or thereabouts (*state here in what manner it arose, and that it is in danger of being lost; and it should contain not only a general allegation of the defendant's insolvency, but also some particular fact or instance, such as that he has committed an act of bankruptcy, or stopped payment, or absconded, or that an execution has issued against him. Where against a bond debtor to the Crown, the affidavit should contain a distinct, positive and unequivocal allegation of the breach of the condition of the bond, etc.*)

3. The deponent further says he verily believes that unless some method more speedy than the ordinary course of proceeding at law be had against the said defendant, ..., for the recovery of the sum of $....., or thereabouts, the same is in danger of being lost.

Sworn, etc.

(2) **Form of flat or order for issue of an Immediate Extent.**

IN THE EXCHEQUER COURT OF CANADA.

Before

The Honourable Mr. Justice.....

In Chambers.

(*Style of cause.*)

Upon hearing A. B. of Counsel for Her Majesty the Queen, and upon reading the affidavit of C. D., let a writ or writs of immediate Extent issue against the said defendant, ... for the recovery of the sum of $.....

Dated at Ottawa, the ..... day of ..... A.D. 18 .

(3) **Form of writ of Immediate Extent.**

(*Heading as in Form* 1 *of Schedule O.*)

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

To the Sheriff of.....

GREETING:

Whereas, by the affidavit of C. D., it appears that A. B. of ..... is indebted to Us in the sum of $..... lawful money of Canada, for ..... which said sum of $..... still remains due and unpaid to Us as by reference to said affidavit filed in Our said Exchequer Court more fully appears.

Now We being willing to be satisfied the said sum of $.... so due to Us with all the speed We can, as is just, do command you that you omit not by reason of any liberty, but enter the same and summon the said A. B. to appear in Our said Exchequer Court at Ottawa, on the ..... day of ..... A. D. 18 , and that you diligently enquire what lands and tenements and of what yearly values that said A. B. now has in your bailiwick, and what goods and chattels, and of what sorts and prices, and what debts, credits, specialties and sums of money the said A. B., or any person or persons to his use or in trust for him now hath or have in your said bailiwick and that all and singular the said goods and chattels, lands and tenements, debts, credits, specialties and sums of money in whose hands soever the same now are, you diligently appraise and extend, and do take and seize the same into Our hands, there to remain until We shall be fully satisfied the said debt, according to the form of the Statute made for the

recovery of such Our debts. And lest this Our command should not be fully executed, We further command and empower you by these presents to summon before you such persons as you shall think proper and carefully examine them in the premises, and that you distinctly and openly make appear to Our said Exchequer Court immediately (*unless a special day of return is mentioned in the fiat*) after the execution hereof, and in what manner you shall have executed this Our command, and that you then have there this writ; provided that what goods and chattels you shall seize into Our hands, by virtue hereof, you do not sell or cause to be sold until We shall otherwise command you.

Witness the Honourable ....., Judge of Our Exchequer Court of Canada, at Ottawa, this ..... day of ..... A. D. 18 .

By the warrant of
Mr. Justice.....

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A LIST OF THE CANADIAN STATUTES HAVING IMMEDIATE BEARING UPON THE JURISDICTION OF THE EXCHEQUER COURT OF CANADA. (a.)

A LIST OF THE CANADIAN STATUTES HAVING IMMEDIATE BEARING UPON THE JURISDICTION OF THE EXCHEQUER COURT OF CANADA. (a.)

(Beginning with the Revised Statutes.)

Title of Act.	Regnal Year.	As Amended by *(as to section cited only.)*	Section.
The Interpretation Act.	R. S. C., ch. 1.....	.....	Sec. 7, sub-sec. (46.) No provision or enactment in any Act shall affect in any manner or way whatsoever, the rights of Her Majesty, her heirs or successors, unless it is expressly stated therein that Her Majesty shall be bound thereby; nor, if such Act is of the nature of a private Act, shall it affect the rights of any person or of any body politic, corporate or collegiate,—such only excepted as are therein mentioned or referred to.

(a.) This list is not exhaustive in so much as the Exchequer Court is also given concurrent original jurisdiction under the designation of "Court of Competent Jurisdiction" or equivalent words in the several Acts of Parliament in respect of the recovery of fines, penalties, etc., (when not otherwise provided) and for enforcing the execution of certain statutory obligations by banks, assurance companies, railway companies and the like, to the public or the Crown; and further as it is a court before which may be brought actions and suits directed under the statutes to be instituted in the name of the Attorney-General for the Dominion of Canada, in the name of the Postmaster-General, in the name of the Minister of the Interior, and in the name of the Minister of Finance and Receiver-General. (Bank Act.) In view, however, of the undisputed prerogative or privilege of the King to choose his own Court, the Exchequer Court would also be a proper forum for the institution of actions under "The Government Railways Act," "The Public Works Act," etc., and in other words for all civil actions in which the Crown in the name of the Dominion of Canada is either plaintiff or defendant.

By sec. 58 of "*The Exchequer Court Act*" it is also provided that whenever in any Act of the Parliament of Canada, or in any order of the Governor in Council, or in any document, it is provided or declared that any matter may be referred to the official arbitrators acting under the "*Act respecting the Official Arbitrators*," or that any powers shall be vested in, or duty shall be performed by such arbitrators, such matters shall be referred to the Exchequer Court, and such powers shall be vested in, and such duties performed by it; and whenever the expression "official arbitrators," or "official arbitrator" occurs in any such Act, order or document, it shall be construed as meaning the Exchequer Court

Title of Act.	Regnal Year.	As Amended by (*as to section cited only.*)	Section.
The Consolidated Revenue and Audit Act.	R. S. C., ch. 20.....	.....	56. The Auditor-General may apply to any Judge of the Exchequer Court of Canada, or to any Judge of a Superior Court of any Province of Canada, for an order that a subpœna be issued from the Court, commanding any person therein named to appear before him at the time and place mentioned in such subpœna, and then and there to testify to all matters within his knowledge relative to any account submitted to him, and (if so required) to bring with him and produce any document, paper or thing which he has in his possession relative to any such account as aforesaid; and such subpœna shall issue accordingly upon the order of such Judge; and any such witness may be summoned from any part of Canada whether within or without the ordinary jurisdiction of the Court issuing the subpœna: and any reasonable travelling expenses shall be tendered to any witness so subpœnaed at the time of such service. 41 V., c. 7, s. 54. Under section 57 the Auditor-General is given the power to issue commission to take evidence, to appoint commissioners vested with the power to issue subpœna in the manner prescribed by section 56. Section 58 provides for penalties on persons summoned failing to attend or produce papers and for punishment as for contempt of court before the tribunal from which the subpœna issued. Sections 60 to 68 deal with the civil liability of accountants under this Act.

Title of Act.	Regnal Year.	As Amended by

scribed by section 56. Section 73 pro[illegible]
persons summoned failing to attend or produce papers and for punishment as for contempt of court before the tribunal from which the subpœna issued.

Sections 60 to 68 deal with the civil liability of accountants under this Act.

Title of Act.	Regnal Year.	As Amended by (*as to section cited only*).	Section.
The Customs Act	R. S. C., ch. 32.....	51 Victoria, ch. 14 and 52 Victoria ch. 14.....	Such portions of the Act which deal with jurisdiction, procedure and evidence are printed in this book, *ante* p. 175.
The Inland Revenue Act.	R. S. C., ch. 34.....	52 Victoria, ch. 15, sec. 1.....	74. Any judge of the Exchequer Court of Canada, or any judge of any of the superior courts in any of the Provinces of Canada, having jurisdiction in the Province or place where the application is made, shall grant a writ of assistance upon application made to him for that purpose by Her Majesty's Attorney-General for Canada, or by a collector of Inland Revenue or any superior officer of Inland Revenue and such writ shall remain in force so long as any person named therein remains an officer of the Inland Revenue, whether in the same capacity or not. 2. For the purposes of this section, any judge of the Court of Queen's Bench, in the Province of Manitoba, shall have jurisdiction over the district of Keewatin, and shall grant a writ of assistance for use therein, in like manner and with like effect as he might grant such writ for use in the Province of Manitoba. Sections 75 and 76 deal with the same subject as in the above section and treat of the powers of officers under a writ of assistance, the entry, search, seizure, arrest and trial of the offender, the tribunal before which the prosecution is to be brought and the persons who shall assist and aid in the execution of any act authorized under the writ.

Title of Act.	Regnal Year.	As Amended by (*as to section cited only.*)	Section.
The Inland Revenue Act. —Continued.....	R. S. C., ch. 34.....	52 Vict., ch. 15, sec 1.....	Sections 77 to 81 treat of the protection given to the officers of Inland Revenue in the performance of these duties.
The Post Office Act.....	R. S. C., ch. 35.....	.....	15. Any chief inspector may, for the purpose of any inquiry or investigation, apply in term or in vacation to any judge of the Exchequer Court of Canada, or of any superior court in any of the Provinces of Canada, or to any judge or stipendiary magistrate in and for the Territories, for an order that a subpœna shall issue from such Court or magistrate, commanding any person therein named to appear before such chief inspector at the time and place mentioned in such subpœna, and then and there to testify to all matters within his knowledge relative to such inquiry or investigation, and (if so required) to bring with him and produce any document, paper or thing which he has in his possession relative to such inquiry or investigation; and such subpœna shall issue accordingly upon the order of any such judge or stipendiary magistrate; and any such witness may be summoned from any part of Canada whether within or without the ordinary jurisdiction of the Court, judge or magistrate issuing the subpœna, and every post office inspector shall, for the purpose of any inquiry or investigation which it is his duty to make, have like powers as those conferred by this action upon a chief inspector. 42 V., ch. 20, sec. 2, *part*.

Title of Act.	Regnal Year.	As Amended by (*as to section cited only.*)	Section.

whether within or without the ordinary jurisdiction of the Court, judge or magistrate issuing the subpœna, and every post office inspector shall, for the purpose of any inquiry or investigation which it is his duty to make, have like powers as those conferred by this action upon a chief inspector. 42 V., ch. 20, sec. 2, *part*.

Title of Act.	Regnal Year.	As Amended by (*as to section cited only.*)	Section.
The Post Office Act.—Continued	R, S. C., ch. 35		By section 16 it is provided that reasonable travelling expenses shall be paid or tendered to any witness so subpœnaed, and further that the witness refusing to appear or to give evidence may be committed and imprisoned for contempt of court by the Court or the Judge that ordered the issue of the subpœna. By section 17 every chief inspector and every post officer inspector is given the power to examine any person on oath upon any matter pertinent to the inquiry and further these two officers are clothed with the power to administer such oath. See also subsection (m) of sec. 9 and subsection 2 of sec. 116 of the same Act.
The Indian Act	R. S. C., ch 43.	53 Vict., ch. 29 sec. 5	53. Whenever patents for Indian lands have issued through fraud or in error or improvidence, the Exchequer Court of Canada, or a superior court in any Province may upon action bill or plaint, respecting such lands situate within its jurisdiction, and upon hearing the parties interested, or upon default of the said parties after such notice of proceeding as the said courts shall respectively order, decree such patents to be void: and upon a registry of such decree in the Department of Indian Affairs, such patents shall be void to all intents: 2. The practice in cour.. in such cases, shall be regulated by orders, from time to time, made by the said courts respectively. 43 V., c. 28, s. 53.

Title of Act.	Regnal Year.	As amended by (*as to section cited only.*)	Section.
An Act Respecting the North-West Mounted Police Force	R. S. C., ch 45.....	52 Vict., ch. 25.....	By subsection (b) of section 13 it is provided that it shall be the duty of the force "to attend upon any judge when specially required and to execute all warrants and perform all duties and services in relation thereto."
The Dominion Lands Act	R. S. C., ch. 54.....		76. If the payment of the Crown dues on any timber has been evaded by any lessee or other person, by the removal of such timber or products out of Canada, or otherwise, the amount of dues so evaded and any expenses incurred by the Crown in enforcing payment of the said dues under this Act may be added to the dues remaining to be collected on any other timber cut on any timber berth by the lessee or by his authority, and may be levied and collected or secured on such timber, together with such last mentioned dues, in the manner hereinbefore provided for the amount due to the Crown, of which payment has been evaded, may be recovered by action or suit in the name of the Minister or his agent, in any court of competent jurisdiction. 43 V., c. 17, s. 58.
The Experimental Farm Station Act.....	R. S. C., ch. 57.....		Section 4. Subsection 3. For the acquiring of lands for the purposes of this Act, all the powers respecting the acquiring and taking

Title of Act.	Regnal Year.	As Amended by (*as to section cited only.*)	Section.

competent jurisdiction. 46 V., c. 17, s. 58.

The Experimental Farm Station Act.....	R. S. C., ch. 57.....		Section 4. Subsection 3. For the acquiring of lands for the purposes of this Act, all the powers respecting the acquiring and taking

Title of Act.	Regnal Year.	As Amended by (*as to section cited only.*)	Section.
The Experimental Farm Station Act—Continued	R. S. C., ch. 57.....	.....	possession of land conferred by "The Expropriation Act," are hereby conferred upon the Minister; and all the provisions of the said Act respecting the compensation to be awarded for for lands acquired thereunder shall apply to lands acquired under the provisions of this Act. 49 V., c. 23, s. 4.
An Act respecting Criminal Statistics.....	R. S. C., ch. 60.....	.....	8. Every one who neglects or refuses to fill up and transmit any schedule, or to transmit any return required under this Act, or wilfully makes a false, partial or incorrect schedule or return, shall incur a penalty of eighty dollars, recoverable, with costs, by any person who sues for the same in any court of record in the Province in which such return should have been made or is made, or in the Exchequer Court of Canada, a moiety whereof shall be paid to the person suing, and the other moiety to the Minister of Finance and Receiver General, to and for the public uses of Canada. 39 V., c. 13, s. 5. Section 12 provides that this Act shall remain in force until a proclamation of the Governor-General revokes it.—No proclamation has as yet been issued and the Department of Agriculture is still working under the provisions of this Act.
The Patent Act.....	R. S. C., ch., 61.....	53 Vict., ch. 13; 54-55 Vict., ch. 33; 55-56 Vict., ch. 24 and 56 Vict., ch. 34.....	Such portions of this Act which deal with jurisdiction, procedure and evidence are printed in this book, *ante* p. 156.

Title of Act.	Regnal Year.	As amended by (*as to section cited only.*)	Section.
The Copyright Act.....	R. S. C., ch. 62.....	53 Vict., ch. 12 and 54-55 Vict., ch. 34.....	Such portions of this Act which deal with jurisdiction, procedure and evidence are printed in this book. see. *ante* p. 164.
The Trade - Mark and Design Act.....	R. S. C., ch. 63.....	53 Vict., ch. 14 and 54-55 Vict., ch. 35.....	Such portions of this Act which deal with jurisdiction, procedure and evidence are printed in this book, see. *ante* p. 167.
The Supreme and Exchequer Courts Act....	R. S. C., ch. 135.....	50-51 Vict. ch. 16 Schedules A & B.	Such portions of this Act which are still applicable to the Exchequer Court of Canada are printed in this book, *ante* p. 123.
The Petition of Right Act	R. S. C., ch. 136.....	50-51 Vict., ch. 16 Schedules A & B.	The whole of this Act is printed in this book, *ante* p. 130.
The Exchequer Court Act	50-51 Vict.. ch. 16	52 Vict., ch. 38; 53 Vict., ch. 35 and 54-55 Vict., ch. 26.....	The whole of this Act is printed in this book. *ante* p. 67.
The Railway Act.....	51 Vict., ch. 29.....	.....	17. Any decision or order made by the Railway Committee under this Act may be made an order of the Exchequer Court of Canada, or of any superior court of any Province of Canada, and shall be enforced in like manner as any rule or order of such court.
The Expropriation Act..	52 Vict., ch. 13.....	.....	The whole Act is printed in this book, *ante* p. 138.

Title of Act.	Regnal Year.	As Amended by (*as to section cited only.*)	Section.

The Railway Act.....	51 Vict., ch. 29.....	.....	under this Act may be made an order of the Exchequer Court of Canada, or of any superior court of any Province of Canada, and shall be enforced in like manner as any rule or order of such court.
The Expropriation Act..	52 Vict., ch. 13.....	.....	The whole Act is printed in this book, *ante* p. 138.

Title of Act.	Regnal Year.	As Amended by (*as to section cited only.*)	Section.
The Bank Act.....	53 Vict., ch. 31.....	.....	Section 54. Subsection 11. The Minister of Finance and Receiver-General, may in his official name, by action in the Exchequer Court of Canada enforce payment (with costs of action) of any sum due and payable by any bank under the provisions of this section. Section 54 relates to the obligation resting with the banks to deposit with the Minister of Finance five per cent. of the amount of their notes in circulation, the formation of "The Bank Circulation Redemption Fund," &c., &c.
An Act to amend the Acts respecting the Harbour of Pictou in Nova Scotia	54-55 Vict., ch. 54.....	.....	Section 2 provides that the Minister of Marine and Fisheries, upon the application of the said Commissioners of the Harbour of Pictou, and with the approval of the Governor in Council, may for the purpose of enabling them to obtain lands as in their judgment are necessary for the purposes of the corporation, take such lands under the provisions of "The Expropriation Act," and in such case all the provisions of the said Act shall apply. 2. The lands so taken may be conveyed by the Crown to the said corporation upon repayment of all damages, charges and expenses incurred by the Crown in respect thereof :

Title of Act.	Regnal Year.	As Amended by (*as to section cited only.*)	Section.
An Act to amend the Acts respecting the Harbour of Pictou in Nova Scotia.—Continued.....	54-55 Vict., ch 54.....	.....	3. The Minister shall not take any such proceedings under this Act until the said corporation has made deposit with the Minister of Finance and Receiver General of an amount sufficient, in the judgment of the Minister, to satisfy all claims against the Crown by reason of any proposed expropriation.
The Canadian Evidence Act, 1893.	Vict., ch 31.....	.....	The whole Act is printed in this book, *ante* p. 197.
The Land Titles Act, 1894	57-58 Vict., ch. 28.....	.....	109. Whenever any amount has been paid out of the said assurance fund on account of any person, the amount may be recovered from him, or if dead, from the estate of such person, by action against his personal representatives, in the name of the Registrar; and a certificate signed by the Minister of Finance and Receiver General of the payment out of the said assurance fund, shall be sufficient proof of such debt; and whenever any amount has been paid out of the assurance fund aforesaid on account of any person who has absconded, or who cannot be found within the Territories, and has left any real or personal estate within the same, a judge, upon the application of the Registrar, and upon the production of a certificate signed by the Minister of Finance and Receiver General that the amount has been paid in satisfaction of a judgment against the

Title of Act.	Regnal Year.	As Amended by (*as to sections cited only.*)	Section.
The Land Titles Act, 1894			

aforesaid on account of any person who has absconded, or who cannot be found within the Territories, and has left any real or personal estate within the same, a judge, upon the application of the Registrar, and upon the production of a certificate signed by the Minister of Finance and Receiver General that the amount has been paid in satisfaction of a judgment against the

Title of Act.	Regnal Year.	As Amended by (*as to sections cited only.*)	Section.
The Land Titles Act, 1894 Continued	57-58 Vict., ch. 28.....	....	Registrar as nominal defendant, and proof of service of the writ in any of the modes provided by the ordinary procedure in the Territories, may allow the Registrar to sign judgment against such person forthwith for the amount so paid out of the said assurance fund, together with the costs of the application; and such judgment shall be final, subject only to the right to have such judgment opened up, as may be provided in relation to ordinary procedure in the Territories, in cases of judgment by default, and the judgment shall be signed in like manner as a final judgment by default in an adverse suit, and execution may issue immediately; and if the person has not left real or personal estate within the Territories sufficient to satisfy the amount for which execution has issued as aforesaid the Registrar may recover such amount, or the unrecovered balance thereof, by information against such person at any time thereafter in the Exchequer Court of Canada at the suit of the Attorney-General of Canada. 130. Nothing contained in this Act shall take away or affect the jurisdiction of any competent court on the ground of actual fraud, or over contracts for the sale or other disposition of land for which a certificate of title has been granted.
The North-West Irrigation Act....	57-58 Vict., ch. 30....	....	40. The Governor in Council may, if in the public interest it is at any time deemed advisable so to do, take over and operate or otherwise dispose of the works of any company

Title of Act.	Regnal Year.	As Amended as (*as to section cited only*).	Section.
The North-West Irrigation Act.—Continued..	57-58 Vict., ch 30.....	....	authorized under this Act: Provided, that compensation shall be paid for such works at their value, such value to be ascertained by reference to the Exchequer Court, or by arbitration, one arbitrator to be appointed by the Governor in Council, the second by the owner of the works to be taken over, and the third by the two so appointed, or in case these cannot agree as to the third arbitrator, by the Exchequer Court, and that in estimating such value the court or the arbitrators may take into account the expenditure of the company and interest on such expenditure, and the value of its property, works and business; Provided also, that no person who at such date is using the water of the said works, shall be deprived of the quantity of water he is entitled to; Provided further, that in any such case the Governor in Council shall have due regard to the claims to consideration of any persons who have prepared or have in course of preparation any land to be supplied with water by the works taken over

COURT HOUSES.

Authority of "The Exchequer Court of Canada" for using Provincial Court Houses, when Sitting in the Several Provinces.

The Exchequer Court having to hold sittings at various times and places in the Dominion, the Legislatures of the Provinces of Ontario, Nova Scotia, New Brunswick and British Columbia have respectively passed an Act providing for the use of the Provincial Court Houses by the Exchequer Court when holding sittings in any of these Provinces.

Satisfactory arrangements have also been made between the Dominion Government and the other Provinces where such provisions have not been passed by the Legislatures.

Ontario.

In Ontario, the use of the Provincial Court Houses by the Exchequer of Canada, is regulated by *The Revised Statutes of Ontario*, 1887, Chapter 42, Section 3, which reads as follows, viz.:—

3. "*Authority of Judges of the Court of Exchequer as to use of Court House, etc.*—In case sittings of the Court of Exchequer of Canada are appointed to be held in any city, town or place, in which a Court House is situated, the Judge presiding at any such sittings shall have in all respects the same authority as a Judge of the High Court in regard to the use of the Court House and other buildings or apartments set apart in the County for the administration of justice."

Ottawa.

In Ottawa, with regard to the use of the Supreme Court Room for the sittings of the Exchequer Court of Canada, an order in Council has been passed on the 1st December, 1887, which reads as follows, viz.:—

"On a Memorandum dated 29th November, 1887, from the Minister of Justice, recommending, with the concurrence of the Minister of Public Works, that authority be granted to use the Court Room at present appropriated to the sittings of the Supreme Court of Canada for the sittings of the Exchequer Court of Canada, when not required for the purpose of the said Supreme Court, and until further otherwise ordered.

"The Committee advise that the requisite authority be granted accordingly.

Nova Scotia.

The Revised Statutes of Nova Scotia, 5th Series, Chapter 111, Section 2, embodies the following provisions, viz.:—

2. "*Power of presiding Judges to occupy Court Room.*—In case sittings of the Court of Exchequer of Canada are appointed to be held in any city, town or place in which a Court House is situated, the Judge presiding at any such sittings shall have in all respects the same authority as a Judge of the Supreme Court of Nova Scotia at *nisi prius* in regard to the use of the Court House, and other buildings or apartments set apart in the county for the administration of justice: Provided, however, that nothing in this section shall be construed to deprive the Supreme Court or any County Court of Nova Scotia, or any of the Judges of said Courts of the use and authority which said Court and the Judges thereof, have heretofore had and exercised of and over the Court House, and other buildings mentioned herein, during any term or sittings of the said Supreme Court of Nova Scotia."

New Brunswick.

By 51 Victoria, Chapter 9, Section 2, it is provided as follows, viz:—

2. "*Authority of presiding Judge as to Court House—Proviso:*—In "case sittings of the Court of Exchequer of Canada are appointed to be "held in any city, town or place, in which a Court House is situated, the "Judge presiding at any such sittings shall have in all respects the same "authority as a Judge of the Supreme Court of New Brunswick at *nisi* "*prius* or upon Circuit, in regard to the use of the Court House and other "buildings or apartments set apart in the County for the administration "of justice: Provided, however, that nothing in this section shall be con- "strued to deprive the Supreme Court, or any County Court of New "Brunswick, or any of the Judges of said Courts, of the use and authority "which said Courts and the Judges thereof, have heretofore had and exer- "cised of and over the Court House and other buildings mentioned herein, "during any term or sittings of the said Supreme Court or County Courts "of New Brunswick."

British Columbia.

By Section 2, Chapter 27 of the Consolidated Acts of British Columbia, 1888, it is enacted as follows, viz:—

2. "*Provision in case of Exchequer Court sitting in this Province:*— "In case sittings of the Court of Exchequer of Canada are appointed to be "held in any place in the Province in which a Court House is situated, the "Judge presiding at any such sittings shall have, in all respects, the same "authority as a Judge at *nisi prius*, in regard to the use of the Court "House and other buildings set apart for the administration of justice in "the Province. (1881, c. 6, s. 2.)

Quebec.

By a Despatch, bearing date the 29th day of December, 1876, His Honour, the Lieutenant Governor, L. Letellier, "met à la disposition des "Honorables Juges de la Cour d'Echiquier, les Salles des séances et les "Chambres des Orateurs du Conseil Legislatif, ou de la Chambre "d'Assemblée."

And by a further Despatch, bearing date the 29th day of December, 1881, His Honour, the Lieutenant Governor, Théodore Robitaille, among other things, informs the Honourable the Secretary of State for the Dominion of Canada, that:—"Cette Cour (Cour de l'Echiquier) pourra à "l'avenir tenir ses séances dans le palais de justice, mais avec prières de "prévenir à l'avance son Gouvernement afin de le mettre en mesure de "faire les arrangements nécessaires."

Manitoba.

His Honour, the Lieutenant Governor, Alexander Morris, by his Despatch of the 2nd day of March, 1877, informs the Honourable the Secretary of State for the Dominion of Canada, that "The Provincial Court "House will be placed at the services of the Court of Exchequer, should it "be required."

Prince Edward Island.

With his Despatch of the 6th February, 1877, His Honour, the Lieutenant Governor, R. Hodgson, transmitted to the Honourable the Secretary of State for the Dominion of Canada, the following resolution of the Executive Council, which reads as follows, viz.:

"*Extract from the Minutes of the Executive Council of Prince Edward Island:—*

Council Chamber, February 1, 1877.

"Present:—His Honour, The Lieutenant-Governor-in-Council.

"His Honour laid before the Council a Circular Despatch from the "Secretary of State, dated at Ottawa, the 26th day of December, 1876, "suggesting that the Provincial Court Houses be made available for trials "of causes by Judges of the Court of Exchequer for the Dominion.

"Whereupon, it was ordered that authority be given for the use of "the Court House of Queen's County for the said trials, excepting at such "period as it may be occupied by the Provincial Supreme Court, the "times of the sittings of which are prescribed by statute, and that then "when so occupied, one of the Legislative Chambers be prepared for the "use of the Court of Exchequer."

"And it is further ordered that a copy of this minute be transmitted to "the Sheriff of the said County of Queen's County, and that he be required "on requisition of the Court of Exchequer to arrange for its meetings in "terms of this order."

Certified,

WILLIAM C. DESBRISAY,
Clerk Ex. Council.

NORTH WEST TERRITORIES.

The Court Houses in the North West Territories being under the control of the Dominion Government, there is no difficulty in securing the same for the sittings of the Exchequer Court of Canada.

Reference to Acts of Parliament.

Passed in the Reign of Her Majesty Queen Victoria.

Reign.	Date.
1 Victoria	1837
1 & 2 Vict.	1838
2 & 3 Vict.	1839
3 & 4 Vict.	1840
4 & 5 Vict.	1841
5 & 6 Vict.	1842
6 & 7 Vict. ..	1843
7 & 8 Vict.	1844
8 & 9 Vict. ...	1845
9 & 10 Vict.	1846
10 & 11 Vict. ...	1847
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12 & 13 Vict. ...	1849
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14 & 15 Vict.	1851
15 & 16 Vict.	1852
16 & 17 Vict	1853
17 & 18 Vict.	1854
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31 & 32 Vict.	1868
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33 & 34 Vict.	1870
34 & 35 Vict.	1871
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37 & 38 Vict.	1874
38 & 39 Vict.	1875
39 & 40 Vict.	1876
40 & 41 Vict.	1877
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APPENDIX.

General Rules and Orders

REGULATING THE

PRACTICE AND PROCEDURE

IN

ADMIRALTY CASES

IN THE

EXCHEQUER COURT OF CANADA,

Made in pursuance of the provisions of "The Colonial Courts of Admiralty Act, 1890," and of "The Admiralty Act, 1891," (Canada), and approved by Order of His Excellency the Governor-General in Council of the 10th day of December, 1892, and by Order of Her Majesty in Council of the 15th day of March, 1893, and brought into force by publication in *The Canada Gazette* on the 10th day of June, 1893.

THE EXCHEQUER COURT OF CANADA.

ADMIRALTY SIDE.

Before the passing of *The Admiralty Act*, 1891, the Parliament of Canada exercised legislative authority over the subject matter of Vice Admiralty jurisdiction in so far as related to navigation, shipping, trade and commerce throughout Canada, while it assumed control in Ontario of the whole subject matter, including the organization of the Courts and Procedure. In the Provinces of Quebec, Nova Scotia, New Brunswick, Prince Edward Island and British Columbia, the Imperial Acts governing the Vice Admiralty Courts were still in force. The Government of Canada, however, paid all the expenses of the maintenance of the Courts, the officers of which were always named by the Imperial Government upon the recommendation of the Government of Canada.

This condition of things was brought to an end by the *Colonial Courts of Admiralty Act*, 1890, (53 54 Vict. (U. K.) ch. 27) and *The Admiralty Act*, 1891, (54-55 Vict. (Can.) ch. 29), by which the exercise of Admiralty Jurisdiction throughout Canada was conferred upon the Exchequer Court of Canada, as being the only Court having original unlimited civil jurisdiction (sec. 2) throughout the Dominion.

In view of the works on Admiralty published in Canada by Mr. Howell and Mr. Stockton, Q. C., since the Admiralty rules were promulgated by the Court, it has been deemed unnecessary to annotate the Admiralty Rules, but merely to reproduce them as published, adding, however, to the same such further rules as have been made since the publication of these works.

The Exchequer Court of Canada sitting on its Admiralty side has been given jurisdiction under the several Imperial Acts and Orders in Council passed in respect of the seal fishery in the North Pacific and Behring's Sea.

Some important cases have been decided by the Local Judge in Admiralty, at Victoria, B. C., under the provisions of these Acts. The first case instituted during the year 1891, was an action *in rem* for the condemnation of the ship "Oscar & Hattie" for illicit hunting of seals in Behring's Sea in contravention of *The Seal Fishery (Behring Sea) Act*, 1891. This ship a fully equipped sealer was seized in Gotzleb Harbour, in Behring's Sea, while taking a supply of water.

By subsection 5 of section 1 of the Act 54-55 Vict. c. 19 (U. K.) it is enacted that "if a British ship is found within "Behring's Sea having on board thereof fishing or shooting "implements or seal skins or bodies of seals, it shall lie on the "owner or master of such ship to prove that the ship was not "used or employed in contravention of this Act." And it was held that the words "used or employed" therein mentioned are not to be confined to the particular use and employment of the ship on the occasion of her seizure, but extend to the whole voyage which she is then prosecuting; and if the ship is found in the condition described in the said subsection she is liable to

forfeiture unless the presumption therein raised can be rebutted by the owner or master. *The Queen v. The Ship "Oscar & Hattie,"* 3 Ex. C. R. 241.

On appeal to the Supreme Court of Canada the above judgment was varied. It was affirmed in so far as it was held that when "a British ship is found in the prohibited waters of Behring "Sea, the burden of proof is upon the owner or master to rebut by "positive evidence that the vessel is not there used or employed in "contravention of the *Seal Fishery (Behring's Sea) Act*, 1891, 54-"55 Vict. (Imp.) c. 19, sec. 1, sub-sec. 5." It was reversed in so far as it found that "there was positive and clear evidence that the "Oscar & Hattie" was not used or employed at the time of her "seizure in contravention of 54 & 55 Vict. c.19,sec. 1. sub-sec. 5." *The Ship "Oscar & Hattie" v. The Queen*, 23 Can. S. C. R. 396.

The Queen v. The Ship Ainoko" (4 Ex. C. R. 195) was the next case of the kind decided by the same tribunal. It was an action for the condemnation of the ship "Ainoko" under the *Seal Fishery (North Pacific) Act*, 1893, and it was there held that where the official log of a ship, arrested under the last mentioned Act, did not disclose the position and proceedings of such ship on certain material dates, an independent log kept by the mate and offered in evidence to prove such facts, will not be admissible as evidence. (*The "Henry Coxon"*, 3 P. D. 156, referred to). It was further held that the mere presence of a ship within the prohibited zone owing to a *bona fides* mistake in the master's calculations did not constitute a contravention of the Act.

The last of this class of cases is that of *The Queen v. The Ship "Minnie"* (4 Ex. C. R. 151), for condemnation under the Imperial British *Seal Fishery (North Pacific) Act*, 1893, and the Order in Council thereunder of July 4th, 1893, of the Schooner "Minnie" seized by the Imperial Russian Transport "Yakout" within the forbidden thirty mile zone around Kormandorskey Islands, manned and armed and having shooting implements and seal skins on board and otherwise fully equipped for hunting, or attempting to hunt or take seals within the prohibited waters in contravention of the enactments therein mentioned. It was in this case held that the Court might without proof, take cognizance of the Imperial Order in Council referred to in sec. 1 of the *Seal Fishery (North Pacific) Act*, 1893, which reads as follows:—"Her Majesty the Queen may, by Order in Council, " prohibit during the period specified by the order, the catching " of seals by British ships in such parts of the seas to which the " Act applies as are specified by order." Under subsec. 3 of sec. 1 of 56-57 Vict. (U. K.) ch. 23, the provisions of secs. 103 and 104 of *The Merchants Act*, 1854, giving jurisdiction to Colonial Admiralty Courts in actions for the condemnation of ships guilty of offences under such Act are made applicable to offences against the first mentioned Act. And where the protocol of the examination of an offending British ship by a Russian vessel did not disclose on its face that the person who signed the same was an officer in command of the examining vessel, or that the vessel was a Russian war vessel, the Court by reason of it being a matter involving international obligation

must apply the maxim *omnia presumunter rite esse acta* and assume that the person who signed the protocol was an officer properly in command of the examining vessel, and that such vessel was a Russian war vessel within the meaning of the Act. Under the provisions of the *Seal Fishery (North Pacific) Act*, 1893, the presence of a ship within the prohibited waters requires the clearest evidence of *bona fides* to exonerate the master of an intention to infringe the provision of the Act and if the explanation of the circumstances are unsatisfactory the ship must be condemned.

On appeal to the Supreme Court of Canada this judgment of the British Columbia Admiralty District was affirmed, with costs. (23 Can. S. C. R. 478).

The jurisdiction of the Exchequer Court as a Court of Admiralty for the Dominion of Canada, in respect of seal fishing in Behring's Sea is continued under the provision of the *Behring Sea Award Act*, 1894, (57 Viet. ch. 2 (U.K.)) and *The Behring Sea Award Order in Council*, 1894. (30 April, 1894, Imp.).

In pursuance of sections 5 and 18 of *The Admiralty Act*, 1891, the Governor in Council, on the 27th day of November, 1891, ordered that the limits of the Toronto Admiralty District and of the Registry thereof should be all that portion of Canada comprising the Province of Ontario, including all such waters as form part of said Province. This Order in Council was published in the Canada Gazette on the 19th day of December, 1891.

The Admiralty Act, 1891, came into force on the 2nd day of October, 1891, by royal proclamation published in the Canada Gazette on the 5th day of October, 1891, under the authority of section 26 of the said Act.

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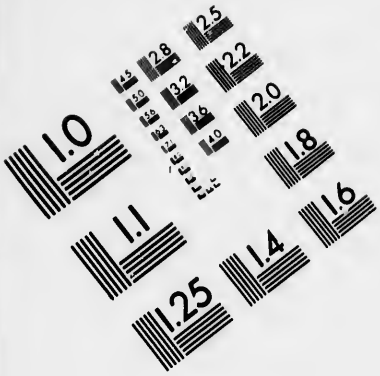

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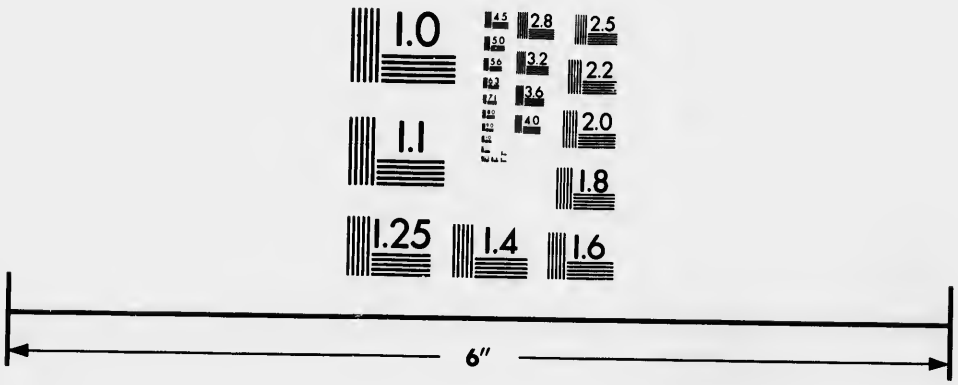

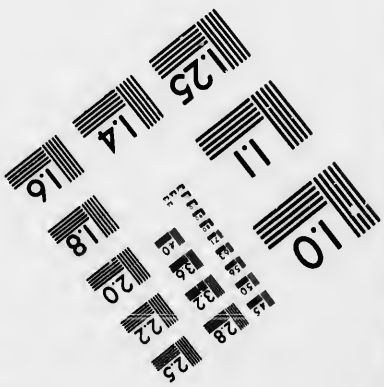

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53-54 VICTORIA.

CHAPTER 27.

An Act to amend the Law respecting the exercise of Admiralty Jurisdiction in Her Majesty's Dominions and elsewhere out of the United Kingdom.

[*25th July*, 1890.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the Colonial Courts of Admiralty Act, 1890.

Colonial Courts of Admiralty.

2.—(1.) Every court of law in a British possession, which is for the time being declared in pursuance of this Act to be a court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a court of Admiralty, with the jurisdiction in this Act mentioned, and may, for the purpose of that jurisdiction, exercise all the powers which it possesses for the purpose of its other civil jurisdiction; and such court, in reference to the jurisdiction conferred by this Act, is in this Act referred to as a Colonial Court of Admiralty. Where in a British possession the Governor is the sole judicial authority, the expression "court of law" for the purposes of this section includes such Governor.

(2.) The jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be over the like places, persons, matters and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to international law and the comity of nations.

(3.) Subject to the provisions of this Act any enactment referring to a Vice-Admiralty Court, which is contained in an Act of the Imperial Parliament or in a Colonial law, shall

apply to a Colonial Court of Admiralty, and be read as if the expression "Colonial Court of Admiralty" were therein substituted for "Vice-Admiralty Court" or for other expressions respectively referring to such Vice-Admiralty Courts or the judge thereof; and the Colonial Court of Admiralty shall have jurisdiction accordingly.

Provided as follows:—

(*a.*) Any enactment in an Act of the Imperial Parliament referring to the Admiralty jurisdiction of the High Court in England, when applied to a Colonial Court of Admiralty in a British possession, shall be read as if the name of that possession were therein substituted for England and Wales; and—

27 & 28 Vict. c. 25. 36 & 37 Vict. c. 88.

(*b.*) A Colonial Court of Admiralty shall have, under the Naval Prize Act, 1864, and under the Slave Trade Act, 1873, and any enactment relating to prize or the slave trade, the jurisdiction thereby conferred on a Vice-Admiralty Court and not the jurisdiction thereby conferred exclusively on the High Court of Admiralty or the High Court of Justice; but, unless for the time being duly authorized, shall not, by virtue of this Act, exercise any jurisdiction under the Naval Prize Act, 1864, or otherwise in relation to prize; and—

(*c.*) A Colonial Court of Admiralty shall not have jurisdiction under this Act to try or punish a person for an offence which according to the law of England is punishable on indictment; and—

(*d.*) A Colonial Court of Admiralty shall not have any greater jurisdiction in relation to the laws and regulations relating to Her Majesty's Navy at sea or under any Act providing for the discipline of Her Majesty's Navy, than may be, from time to time, conferred on such Court by Order in Council.

(4.) Where a Court in a British possession exercises in respect of matters arising outside the body of a county or other like part of a British possession any jurisdiction exercisable under this Act, that jurisdiction shall be deemed to be exercised under this Act and not otherwise.

Power of Colonial legislature as to Admiralty jurisdiction.

3. The legislature of a British possession may, by any Colonial law,—

(*a.*) declare any court of unlimited civil jurisdiction, whether original or appellate, in that possession to be a Colonial Court of Admiralty, and provide for the exercise by such court of its jurisdiction under this Act, and limit territorially or otherwise, the extent of such jurisdiction; and—

(*b.*) confer upon any inferior or subordinate court in that possession such partial or limited Admiralty jurisdiction under such regulations and with such appeal (if any) as may seem fit:

Provided that any such Colonial law shall not confer any jurisdiction which is not by this Act conferred upon a Colonial Court of Admiralty.

Reservation of Colonial law for Her Majesty's assent.

4. Every Colonial law which is made in pursuance of this Act, or affects the jurisdiction of or practice or procedure in any court of such possession in respect of the jurisdiction conferred by this Act, or alters any such Colonial law as above in this section mentioned, which has been previously passed, shall, unless previously approved by Her Majesty through a Secretary of State, either be reserved for the signification of Her Majesty's pleasure thereon, or contain a suspending clause providing that such law shall not come into operation until Her Majesty's pleasure thereon has been publicly signified in the British possession in which it has been passed.

Local Admiralty appeal.

5. Subject to rules of court under this Act, judgments of a court in a British possession given or made in the exercise of the jurisdiction conferred on it by this Act, shall be subject to the like local appeal, if any, as judgments of the court in the exercise of its ordinary civil jurisdiction, and the court having cognizance of such appeal shall, for the purpose thereof, possess all the jurisdiction by this Act conferred upon a Colonial Court of Admiralty.

Admiralty appeal to the Queen in Council.

6.—(1). The appeal from a judgment of any court in a British possession in the exercise of the jurisdiction conferred by this Act, either where there is as of right no local appeal or after a decision on local appeal, lies to Her Majesty the Queen in Council.

(2.) Save as may be otherwise specially allowed in a particular case by Her Majesty the Queen in Council, an appeal under this section shall not be allowed—

(*a.*) from any judgment not having the effect of a definitive judgment unless the court appealed from has given leave for such appeal, nor—

(*b.*) from any judgment unless the petition of appeal has been lodged within the time prescribed by rules, or if no time is prescribed within six months from the date of the judgment appealed against, or if leave to appeal has been given then from the date of such leave.

(3.) For the purpose of appeals under this Act, Her Majesty the Queen in Council and the Judicial Committee of the Privy Council shall, subject to rules under this section, have all such powers for making and enforcing judgments, whether interlocutory or final, for punishing contempts, for requiring the payment of money into court, or for any other purpose, as may be necessary, or as were possessed by the High Court of Delegates before the passing of the Act transferring the powers of such court to Her Majesty in Council, or as are for the time being possessed by the

High Court in England or by the court appealed from in relation to the like matters as those forming the subject of appeals under this Act.

(4.) All Orders of the Queen in Council or the Judicial Committee of the Privy Council for the purposes aforesaid or otherwise in relation to appeals under this Act shall have full effect throughout Her Majesty's dominions, and in all places where Her Majesty has jurisdiction.

(5.) This section shall be in addition to and not in derogation of the authority of Her Majesty in Council or the Judicial Committee of the Privy Council arising otherwise than under this Act, and all enactments relating to appeals to Her Majesty in Council or to the powers of Her Majesty in Council or the Judicial Committee of the Privy Council in relation to those appeals, whether for making rules and orders or otherwise, shall extend, save as otherwise directed by Her Majesty in Council, to appeals to Her Majesty in Council under this Act.

Rules of court.

7.—(1.) Rules of court for regulating the procedure and practice (including fees and costs) in a court in a British possession in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same authority and in the same manner as rules touching the practice, procedure, fees and costs in the said court in the exercise of its ordinary civil jurisdiction respectively are made:

Provided that the rules under this section shall not, save as provided by this Act, extend to matters relating to the slave trade, and shall not (save as provided by this section) come into operation until they have been approved by Her Majesty in Council, but on coming into operation shall have full effect as if enacted in this Act; and any enactment inconsistent therewith shall, so far as it is so inconsistent, be repealed.

(2.) It shall be lawful for Her Majesty in Council, in approving rules made under this section, to declare that the rules so made with respect to any matters which appear to Her Majesty to be matters of detail or of local concern may be revoked, varied or added to, without the approval required by this section.

(3.) Such rules may provide for the exercise of any jurisdiction conferred by this Act by the full court, or by any judge or judges thereof, and subject to any rules, where the ordinary civil jurisdiction of the court can, in any case, be exercised by a single judge, any jurisdiction conferred by this Act may in the like case be exercised by a single judge.

Droits of Admiralty and of the Crown.

8.—(1.) Subject to the provisions of this section nothing in this Act shall alter the application of any droits of Admiralty or droits of or forfeitures to the Crown in a British possession; and such droits and forfeitures, when condemned

by a court of a British possession in the exercise of the jurisdiction conferred by this Act, shall, save as is otherwise provided by any other Act, be notified, accounted for and dealt with in such manner as the Treasury from time to time direct, and the officers of every Colonial Court of Admiralty and of every other court in a British possession exercising Admiralty jurisdiction shall obey such directions in respect of the said droits and forfeitures as may be from time to time given by the Treasury.

(2.) It shall be lawful for Her Majesty the Queen in Council by Order to direct that, subject to any conditions, exceptions, reservations and regulations contained in the Order, the said droits and forfeitures condemned by a court in a British possession shall form part of the revenues of that possession either for ever or for such limited term or subject to such revocation as may be specified in the Order.

(3.) If and so long as any of such droits and forfeitures by virtue of this or any other Act form part of the revenues of the said possession the same shall, subject to the provisions of any law for the time being applicable thereto, be notified, accounted for and dealt with in manner directed by the Government of the possession, and the Treasury shall not have any power in relation thereto.

Power to establish Vice-Admiralty Courts.

9.—(1.) It shall be lawful for Her Majesty, by commission under the Great Seal to empower the Admiralty to establish in a British possession any Vice-Admiralty Court or Courts.

(2.) Upon the establishment of a Vice-Admiralty Court in a British possession, the Admiralty, by writing under their hands and the seal of the office of Admiralty, in such form as the Admiralty may direct, may appoint a judge, registrar, marshal and other officers of the court, and may cancel any such appointment; and in addition to any other jurisdiction of such court, may (subject to the limits imposed by this Act or the said commission from Her Majesty) vest in such court the whole or any part of the jurisdiction by or by virtue of this Act conferred upon any courts of that British possession; and may vary or revoke such vesting, and while such vesting is in force the power of such last-mentioned courts to exercise the jurisdiction so vested shall be suspended.

Provided that—

(*a.*) nothing in this section shall authorize a Vice-Admiralty Court so established in India or in any British possession having a representative legislature, to exercise any jurisdiction except for some purpose relating to prize, to Her Majesty's Navy, to the slave trade, to the matters dealt with by the Foreign Enlistment Act, 1870, or the Pacific Islanders Protection Acts, 1872 and 1875, or to matters in which questions arise relating to treaties or conventions with foreign countries, or to international law; and—

33 & 34 Vict. c. 90.
35 & 36 Vict. c. 19.
38 & 39 Vict. c. 51.

(*b.*) in the event of a vacancy in the office of judge, registrar, marshal or other officer of any Vice-Admiralty Court in a British possession, the Governor of that possession may appoint a fit person to fill the vacancy until an appointment to the office is made by the Admiralty.

(3.) The provisions of this Act with respect to appeals to Her Majesty in Council from courts in British possessions in the exercise of the jurisdiction conferred by this Act, shall apply to appeals from Vice-Admiralty Courts, but the rules and orders made in relation to appeals from Vice-Admiralty Courts may differ from the rules made in relation to appeals from the said courts in British possessions.

(4.) If Her Majesty at any time by commission under the Great Seal so directs, the Admiralty shall, by writing under their hands and the seal of the office of Admiralty, abolish a Vice-Admiralty Court established in any British possession under this section, and upon such abolition the jurisdiction of any Colonial Court of Admiralty in that possession which was previously suspended shall be revived

Power to appoint a vice-admiral.

10. Nothing in this Act shall affect any power of appointing a vice-admiral in and for any British possession or any place therein, and whenever there is not a formally appointed vice-admiral in a British possession or any place therein, the Governor of the possession shall be *ex-officio* vice-admiral thereof.

Exception of Channel Islands and other possessions.

11.—(1.) The provisions of this Act with respect to Colonial Courts of Admiralty shall not apply to the Channel Islands.

(2.) It shall be lawful for the Queen in Council by Order to declare, with respect to any British possession which has not a representative legislature, that the jurisdiction conferred by this Act on Colonial Courts of Admiralty shall not be vested in any court of such possession, or shall be vested only to the partial or limited extent specified in the Order.

Application of Act to courts under Foreign Jurisdiction Acts.

12. It shall be lawful for Her Majesty the Queen in Council by Order to direct that this Act shall, subject to the conditions, exceptions and qualifications (if any) contained in the Order, apply to any Court established by Her Majesty for the exercise of jurisdiction in any place out of Her Majesty's dominions which is named in the Order as if that Court were a Colonial Court of Admiralty, and to provide for carrying into effect such application.

Rules for procedure in slave trade matters.

13.—(1.) It shall be lawful for Her Majesty the Queen in Council by Order to make rules as to the practice and procedure (including fees and costs) to be observed in and the returns to be made from Colonial Courts of Admiralty and Vice-Admiralty Courts in the exercise of their jurisdiction

in matters relating to the slave trade, and in and from East African Courts as defined by the Slave Trade (East African Courts) Acts, 1873 and 1879. 36 & 37 Vict. c. 59. 42 & 43 Vict. c. 38.

(2.) Except when inconsistent with such Order in Council, the rules of court for the time being in force in a Colonial Court of Admiralty or Vice-Admiralty Court shall, so far as applicable, extend to proceedings in such court in matters relating to the slave trade.

(3.) The provisions of this Act with respect to appeals to Her Majesty in Council, from courts in British possessions in the exercise of the jurisdiction conferred by this Act, shall apply, with the necessary modifications, to appeals from judgments of any East African court made or purporting to be made in exercise of the jurisdiction under the Slave Trade (East African Courts) Acts, 1873 and 1879.

14. It shall be lawful for Her Majesty in Council from time to time to make Orders for the purposes authorized by this Act, and to revoke and vary such Orders, and every such Order while in operation shall have effect as if it were part of this Act. Orders in Council.

15. In the construction of this Act, unless the context otherwise requires,— Interpretation.

The expression "representative legislature" means, in relation to a British possession, a legislature comprising a legislative body of which at least one-half are elected by inhabitants of the British possession.

The expression "unlimited civil jurisdiction" means civil jurisdiction unlimited as to the value of the subject-matter at issue, or as to the amount that may be claimed or recovered.

The expression "judgment" includes a decree, order, and sentence.

The expression "appeal" means any appeal, rehearing, or review; and the expression 'local appeal" means an appeal to any court inferior to Her Majesty in Council.

The expression "Colonial law" means any Act, ordinance, or other law having the force of legislative enactment in a British possession and made by any authority, other than the Imperial Parliament or Her Majesty in Council, competent to make laws for such possession.

16.—(1.) This Act shall, save as otherwise in this Act provided, come into force in every British possession on the first day of July, one thousand eight hundred and ninety-one. Commencement of Act.

Provided that—

(*a.*) This Act shall not come into force in any of the British possessions named in the First Schedule to this Act until Her Majesty so directs by Order in Council and until the day named in that behalf in such Order; and—

(*b.*) If before any day above mentioned rules of court for the Colonial Court of Admiralty in any British possession have been approved by Her Majesty in Council, this Act may be proclaimed in that possession by the Governor thereof, and on such proclamation shall come into force on the day named in the proclamation

(2.) The day upon which this Act comes into force in any British possession shall, as regards that British possession, be deemed to be the commencement of this Act.

(3.) If, on the commencement of this Act in any British possession, rules of court have not been approved by Her Majesty in pursuance of this Act, the rules in force at such commencement under the Vice-Admiralty Courts Act, 1863, and in India the rules in force at such commencement regulating the respective Vice-Admiralty Courts or Courts of Admiralty in India, including any rules made with reference to proceedings instituted on behalf of Her Majesty's ships, shall, so far as applicable, have effect in the Colonial Court or Courts of Admiralty of such possession, and in any Vice-Admiralty Court established under this Act in that possession, as rules of court under this Act, and may be revoked and varied accordingly; and all fees payable under such rules may be taken in such manner as the Colonial Court may direct, so however that the amount of each such fee shall, so nearly as practicable, be paid to the same officer or person who but for the passing of this Act would have been entitled to receive the same in respect of like business. So far as any such rules are inapplicable or do not extend, the rules of court for the exercise by a court of its ordinary civil jurisdiction shall have effect as rules for the exercise by the same court of the jurisdiction conferred by this Act.

26 & 27 Vict. c. 24.

(4.) At any time after the passing of this Act any Colonial law may be passed, and any Vice-Admiralty Court may be established and jurisdiction vested in such Court, but any such law, establishment, or vesting shall not come into effect until the commencement of this Act.

Abolition of Vice-Admiralty Courts.

17. On the commencement of this Act in any British possession, but subject to the provisions of this Act, every Vice-Admiralty Court in that possession shall be abolished; subject as follows:—

(1.) All judgments of such Vice-Admiralty Court shall be executed and may be appealed from in like manner as if this Act had not passed, and all appeals from any Vice-Admiralty Court pending at the commencement of this Act shall be heard and determined, and the judgment thereon executed as nearly as may be in like manner as if this Act had not passed:

(2.) All proceedings pending in the Vice-Admiralty Court in any British possession at the commencement of this Act shall, notwithstanding the repeal of any enactment by this Act, be continued in a Colonial Court of Admi-

ralty of the possession in manner directed by rules of court, and, so far as no such rule extends, in like manner, as nearly as may be, as if they had been originally begun in such court:

(3.) Where any person holding an office, whether that of judge, registrar or marshal, or any other office in any such Vice-Admiralty Court in a British possession, suffers any pecuniary loss in consequence of the abolition of such court, the Government of the British possession, on complaint of such person, shall provide that such person shall receive reasonable compensation (by way of an increase of salary or a capital sum, or otherwise) in respect of his loss, subject nevertheless to the performance, if required by the said Government of the like duties as before such abolition:

(4.) All books, papers, documents, office furniture and other things at the commencement of this Act belonging, or appertaining to any Vice-Admiralty Court, shall be delivered over to the proper officer of the Colonial Court of Admiralty or be otherwise dealt with in such manner as, subject to any directions from Her Majesty, the Governor may direct:

(5.) Where, at the commencement of this Act in a British possession, any person holds a commission to act as advocate in any Vice-Admiralty Court abolished by this Act, either for Her Majesty or for the Admiralty, such commission shall be of the same avail in every court of the same British possession exercising jurisdiction under this Act, as if such court were the court mentioned or referred to in such commission.

Repeal.

18. The Acts specified in the Second Schedule to this Act shall, to the extent mentioned in the third column of that schedule, be repealed as respects any British possession as from the commencement of this Act in that possession, and as respects any courts out of Her Majesty's dominions as from the date of any Order applying this Act:

Provided that—

(*a.*) Any appeal against a judgment made before the commencement of this Act may be brought and any such appeal and any proceedings or appeals pending at the commencement of this Act may be carried on and completed and carried into effect as if such repeal had not been enacted; and—

(*b.*) All enactments and rules at the passing of this Act in force touching the practice, procedure, fees, costs and returns in matters relating to the slave trade in Vice-Admiralty Courts and in East African Courts shall have effect as rules made in pursuance of this Act, and shall apply to Colonial Courts of Admiralty, and may be altered and revoked accordingly.

SCHEDULES.

Section 16.

FIRST SCHEDULE.

BRITISH POSSESSIONS IN WHICH OPERATION OF ACT IS DELAYED.

New South Wales,	Victoria.
St. Helena.	British Honduras.

SECOND SCHEDULE.

Section 18.

ENACTMENTS REPEALED.

Session and Chapter.	Title of Act.	Extent of Repeal.
56 Geo. 3 c. 82.....	An Act to render valid the judicial Acts of Surrogates of Vice-Admiralty Courts abroad, during vacancies in office of Judges of such courts.	The whole Act.
2 & 3 Will. 4 c. 51...	An Act to regulate the practice and the fees in the Vice-Admiralty Courts abroad, and to obviate doubts as to their jurisdiction.	The whole Act.
3 & 4 Will. 4 c. 41...	An Act for the better administration of justice in His Majesty's Privy Council.	Section two.
6 & 7 Vict. c. 38.....	An Act to make further regulations for facilitating the hearing appeals and other matters by the Judicial Committee of the Privy Council.	In section two, the words "or "from any Admiralty or "Vice-Admiralty Court," and the words "or the "Lords Commissioners of "Appeals in prize causes "or their surrogates." In section three, the words "and the High Court of "Admiralty of England," and the words "and from "any Admiralty or Vice-"Admiralty Court." In section five, from the first "the High Court of Admiralty" to the end of the section. In section seven, the words "and from Admiralty or "Vice-Admiralty Courts." Sections nine and ten, so far as relates to maritime causes. In section twelve, the words "or maritime." In section fifteen, the words "and Admiralty and Vice-"Admiralty."
7 & 8 Vict. c. 69.....	An Act for amending an Act passed in the fourth year of the reign of His late Majesty, intituled: "An Act for the "better administration of jus-"tice in His Majesty's Privy "Council," and to extend its jurisdiction and powers.	In section twelve, the words "and from Admiralty and "Vice-Admiralty Courts," and so much of the rest of the section as relates to maritime causes.

SECOND SCHEDULE—(*Continued.*)

ENACTMENTS REPEALED.

Session and Chapter.	Title of Act.	Extent of Repeal.
26 Vict., c. 24....	The Vice-Admiralty Courts Act, 1863.	The whole Act.
30 & 31 Vict. c. 45...	The Vice-Admiralty Courts Act Amendment Act, 1867.	The whole Act.
36 & 37 Vict. c. 59...	The Slave Trade (East African Courts) Act, 1873.	Sections four and five.
36 & 37 Vict. c. 88...	The Slave Trade Act, 1873.	Section twenty as far as relates to the taxation of any costs, charges and expenses which can be taxed in pursuance of this Act. In section twenty-three, the words "under the Vice-Admiralty Courts Act, 1863."
38 & 39 Vict. c. 51...	The Pacific Islanders Protection Act, 1875.	So much of section six as authorizes Her Majesty to confer Admiralty jurisdiction on any court.

OTTAWA: Printed by S. E. DAWSON, Law Printer to the Queen's Most Excellent Majesty.

54-55 VICTORIA.

CHAPTER 29.

An Act to provide for the exercise of Admiralty Jurisdiction within Canada, in accordance with "The Colonial Courts of Admiralty Act, 1890."

[*Assented to* 31*st July*, 1891.]

Preamble.

WHEREAS by the third section of the Act of the Parliament of the United Kingdom, passed in the session held in the fifty-third and fifty-fourth years of Her Majesty's reign, chapter twenty-seven, intituled "*An Act to amend the Law respecting the exercise of Admiralty Jurisdiction in Her Majesty's Dominions and elsewhere out of the United Kingdom*," it is amongst other things provided that the Legislature of a British Possession may, by any colonial law, declare any court of unlimited civil jurisdiction, whether original or appellate, in that Possession, to be a Colonial Court of Admiralty, and provide for the exercise by such court of its jurisdiction under the said Act; and whereas the authority given is exercisable by the Parliament of Canada by virtue of the powers vested in it by "*The British North America Act*, 1867," and "*The Interpretation Act*," 1889," of the United Kingdom; and whereas the expression "unlimited civil jurisdiction," as defined by the Act first herein referred to, which may be cited as "*The Colonial Courts of Admiralty Act*, 1890," means civil jurisdiction unlimited as to the value of the subject-matter at issue, or as to the amount that may be claimed or recovered; and whereas by the second section of the said "*Colonial Courts of Admiralty Act*, 1890," it is amongst other things enacted that every court of law in a British Possession, which is, for the time being, declared in pursuance of the said Act to be a Court of Admiralty, or which, if no such declaration is in force in the Possession, has therein original unlimited civil jurisdiction, shall be a Court of Admiralty, with the jurisdiction in the said Act mentioned; and whereas the Exchequer Court of Canada is a court of law which, within Canada, has original unlimited civil jurisdiction as defined by the said Act, and it is desirable, in pursuance of the said Act, to declare the said court to be a Court of Admiralty: Therefore Her Majesty, by and with the advice and consent

53-54 V. (Imp) c. 27.

30-31 V. (Imp) c. 63.

52-53 V. (Imp) c. 63.

of the Senate and House of Commons of Canada, enacts as follows:—

Short title.

1. This Act may be cited as "*The Admiralty Act*, 1891."

Interpretation.

2. In this Act the expression "the Exchequer Court," or "the court," means the Exchequer Court of Canada.

Exchequer Court constituted a Court of Admiralty.

3. In pursuance of the powers given by "*The Colonial Courts of Admiralty Act*, 1890," aforesaid, or otherwise in any manner vested in the Parliament of Canada, it is enacted and declared that the Exchequer Court of Canada is and shall be, within Canada, a Colonial Court of Admiralty, and as a Court of Admiralty shall, within Canada, have and exercise all the jurisdiction, powers and authority conferred by the said Act and by this Act.

Jurisdiction.

4. Such jurisdiction, powers and authority shall be exercisable and exercised by the Exchequer Court throughout Canada, and the waters thereof, whether tidal or non-tidal, or naturally navigable or artificially made so, and all persons shall, as well in such parts of Canada as have heretofore been beyond the reach of the process of any Vice-Admiralty Court, as elsewhere therein, have all rights and remedies in all matters, (including cases of contract and tort and proceedings *in rem* and *in personam*), arising out of or connected with navigation, shipping, trade or commerce, which may be had or enforced in any Colonial Court of Admiralty under "*The Colonial Courts of Admiralty Act*, 1890."

Admiralty districts and registries.

5. The Governor in Council may, from time to time, constitute any part of Canada an Admiralty district for the purposes of this Act, and fix the limits thereof, and provide for the establishment of some place therein of a registry of the Exchequer Court on its Admiralty side.

2. The Governor in Council may also, from time to time, change the limits of any Admiralty district, create new districts, and assign to any district a name and place of registry.

Local judges in Admiralty.

6. The Governor in Council may, from time to time, appoint any judge of a Superior or County Court, or any barrister of not less than seven years standing, to be a local judge in Admiralty of the Exchequer Court in and for any Admiralty district; and every such local judge of Admiralty shall hold office during good behaviour, but shall be removable by the Governor General on address of the Senate and House of Commons; and such judge shall be designated a local judge in Admiralty of the Exchequer Court.

Oath of office.

7. Every such local judge in Admiralty shall, previously to his entering on the duties of his office, take, before the

judge of the Exchequer Court or a judge of any Superior Court, an oath in the form following, that is to say:—

"I, do solemnly and sincerely swear that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as local judge in Admiralty in and for the Admiralty district of *(as the case may be)*. So help me God."

Officers of court.

8. The Governor in Council may, from time to time, appoint for any district a registrar, a marshal and such other officers and clerks as are necessary.

Powers of local judges.

9. Every local judge in Admiralty shall, within the Admiralty district for which he is appointed, have and exercise the jurisdiction, and the powers and authority relating thereto, of the judge of the Exchequer Court in respect of the admiralty jurisdiction of such court.

Deputy judges.

10. A local judge in Admiralty may, from time to time, with the approval of the Governor in Council, appoint a deputy judge; and such deputy judge shall have and exercise all such jurisdiction, powers and authority as are possessed by the local judge:

Tenure of office.

2. The appointment of a deputy judge shall not be determined by the occurrence of a vacancy in the office of the judge:

3. A local judge in Admiralty may, with the approval of the Governor in Council, at any time revoke the appointment of a deputy judge.

Surrogate judges.

11. The Governor in Council may, from time to time, appoint, for any district or portion of a district, a surrogate judge or judges; and such surrogate judge shall have such jurisdiction, powers and authority, and be paid such fees, as are, from time to time, prescribed by general rules or orders:

Tenure of office.

2. A surrogate judge shall hold office during pleasure; and his appointment shall not be determined by the occurrence of a vacancy in the office of the local judge of his district.

Oaths.

12. Every deputy and surrogate judge shall, previously to entering on the duties of office, take, before the judge of the Exchequer Court, or the judge of any Superior Court, an oath similar in form to that to be taken by a local judge.

Where suits may be instituted.

13. Any suit may be instituted in any district registry when—

(a.) The ship or property, the subject of the suit, is at the time of the institution of the suit within the district of such registry;

(*b.*) The owner or owners of the ship or property, or the owner or owners of the larger number of shares in the ship, or the managing owner or the ship's husband reside at the time of the institution of the suit within the district of such registry;

(*c*) The port of registry of the ship is within the district of such registry; or—

(*d.*) The parties so agree by a memorandum signed by them or by their attorneys or agents:

Proviso. Provided always, that when a suit has been instituted in any registry, no further suit shall be instituted in respect of the same matter in any other registry of the court, without leave of the judge of the court, and subject to such terms, as to costs and otherwise, as he directs.

Appeal. **14.** An appeal may be made to the Exchequer Court from any final judgment, decree or order of any local judge in Admiralty, and, with the permission of such local judge or of the judge of the Exchequer Court, from any interlocutory decree or order therein, on security for costs being first given, and subject to such other provisions as are prescribed by general rules or orders:

2. An appeal may, however, be made direct to the Supreme Court of Canada from any final judgment, decree or order of a local judge, subject to the provisions of "*The Exchequer Court Act*" regarding appeals

Removal of suit. **15.** Any party to a suit or to an appeal may, at any stage of such suit or appeal, by leave of the court, and subject to such terms as to costs or otherwise as the court directs, remove any suit instituted or appeal pending in any registry to any other registry.

Fees, &c. **16.** A scale of costs and charges in Admiralty causes in the district registries of the court, and fees to be taken in such registries, shall be prescribed by general rules or orders.

Provisional districts and registries. **17.** Until otherwise provided by the Governor in Council, the following Provinces shall each constitute an Admiralty district, for the purposes of this Act, and a registry of the Exchequer Court on its Admiralty side shall be established and maintained within such districts at the places following, that is to say:—

(*a.*) The Province of Quebec shall constitute the district of Quebec, with a registry at the city of Quebec;

(*b.*) The Province of Nova Scotia shall constitute the district of Nova Scotia, with a registry at the city of Halifax;

(*c.*) The Province of New Brunswick shall constitute the district of New Brunswick, with a registry at the city of St. John;

(*d.*) The Province of Prince Edward Island shall constitute the district of Prince Edward Island, with a registry at the city of Charlottetown; and—

(*e.*) The Province of British Columbia shall constitute the district of British Columbia, with a registry at the city of Victoria.

Toronto district.

18. Until otherwise provided by the Governor in Council, there shall be a registry of the Exchequer Court on its Admiralty side at the city of Toronto, and the Governor in Council may, from time to time, fix the limits of such registry, which shall be known as "The Toronto Admiralty District."

As to judges of Vice-Admiralty courts.

19. Every person who, at the coming into force of "*The Colonial Courts of Admiralty Act*, 1890," holds in Canada the office of judge of a Vice-Admiralty Court, shall, until his death, resignation or removal from such office or from the office by virtue of which he is such judge of a Vice-Admiralty Court, or until an arrangement is made with him under the seventeenth section of the Act last mentioned, have and exercise, within the Admiralty district corresponding to the limits of his former jurisdiction as such judge of a Court of Vice-Admiralty, all the jurisdiction, powers and authority of a local judge in Admiralty.

As to judge of Maritime Court of Ontario.

20. The judge of the Maritime Court of Ontario shall, in like manner and for a like time, have and exercise within the Toronto Admiralty district all the jurisdiction, powers and authority of a local judge in Admiralty.

As to Officers of Vice-Admiralty courts.

21. Every person who, at the coming into force of "*The Colonial Courts of Admiralty Act*, 1890," is a registrar, marshal or other officer of a Vice-Admiralty Court in Canada, shall, during the pleasure of the Governor in Council, and within the Admiralty district corresponding to the limits of the jurisdiction of such Vice-Admiralty Court, have and exercise the like office in the Exchequer Court in respect of its Admiralty jurisdiction, and shall, subject to any general rule or order, have the like powers and authority, and perform the like duties, as he might have had or performed, as such registrar, marshal or other officer of a Vice-Admiralty Court.

As to registrar and marshal of Maritime Court of Ontario.

22. The registrar and marshal of the Maritime Court of Ontario shall, during the pleasure of the Governor in Council, be the registrar and marshal, respectively, of the Toronto Admiralty district.

Maritime Court of Ontario abolished.

23. On the coming into force of this Act, the Maritime Court of Ontario shall be abolished, but subject to the following provisions :—

(1.) All judgments of such court shall be executed and may be appealed from in like manner as if this Act had not been passed, and all appeals from such court pending at the

commencement of this Act shall be heard and determined and the judgment thereon executed as nearly as may be in like manner as if this Act had not been passed :

(2.) All proceedings pending in such court at the commencement of this Act shall be continued in the district registry corresponding to that in which they were instituted or are now pending :

(3.) The procedure and practice (including fees and costs) now in force in such court shall, until otherwise provided by general rule or order, be followed, as nearly as may be, in any proceeding now pending in such court or hereafter instituted in the registry of any Admiralty district in the Province of Ontario :

(4.) The provisions of the fifth and sixth sub-sections of the fourteenth section of "*The Maritime Court Act*" shall apply to any proceeding instituted in the registry of any Admiralty district in the Province of Ontario.

Construction.

24. Nothing in sections five to twenty-two of this Act' both inclusive, shall limit, lessen or impair the jurisdiction of the judge of the Exchequer Court in respect of the Admiralty jurisdiction of the court, or otherwise.

Rules of court.

25. Any rules or orders of court made by the Exchequer Court of Canada for regulating the procedure and practice therein, (including fees and costs), in the exercise of the jurisdiction conferred by "*The Colonial Courts of Admiralty Act*, 1890," and this Act, which requires the approval of Her Majesty in Council, shall be submitted to the Governor in Council for his approval, and, if approved by him, shall be transmitted to Her Majesty in Council for Her approval.

Commencement of Act.

26. This Act shall not come into force until Her Majesty's pleasure thereon has been signified by proclamation in the *Canada Gazette*.

OTTAWA : Printed by S. E. Dawson, Law Printer to the Queen's Most Excellent Majesty.

CERTIFIED Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council, on the 10th December, 1892.

On a report dated 6th December, 1892, from the Minister of Justice submitting for Your Excellency's consideration certain general rules and orders, made by the judge of the Exchequer Court of Canada on the 5th December instant, for regulating the practice and procedure in that court in Admiralty cases. These rules and orders, under the provisions of section 25 of *The Admiralty Act*, 1891, require the approval of Your Excellency in Council, and under the provisions of section 7 of *The Colonial Courts of Admiralty Act*, 1890, they will not come into operation until they have been approved also by Her Majesty in Council.

The Minister is of opinion that they are such as should receive approval of Your Excellency in Council, and he recommends accordingly.

The Minister further recommends that a copy of them be transmitted to the Right Honourable Her Majesty's Principal Secretary of State for the Colonies with a request that he will cause them to be submitted to Her Majesty in Council for approval.

The Minister further suggests that in the Despatch transmitting these rules and orders, attention be called, with a view to such action thereunder as to Her Majesty in Council may seem proper, to the provisions of subsection 2 of section 7 of *The Colonial Courts of Admiralty Act* under which Her Majesty in Council may, in approving rules made under the section, declare that rules with respect to any matters which appear to Her Majesty to be matters of detail or of local concern may be revoked, varied or added to, without the approval required by the section.

The Committee advise that Your Excellency be moved to take action in the sense of the recommendation of the Minister of Justice.

All of which is respectfully submitted for Your Excellency's approval.

JOHN J. McGEE.
Clerk of the Privy Council.

To the Honourable
The Minister of Justice.

DOWNING STREET, 6th April, 1893.

MY LORD,—I have the honour to transmit to you, with reference to your despatch, No. 331, of the 14th of December, an Order of Her Majesty in Council approving the rules of Court regulating the practice and procedure in Admiralty cases in the Exchequer Court of Canada.

I have, &c.,

(Sd.) R. H. MEADE.
For the S. of S.

The Officer Administering
The Government of Canada.

Date.	Description of Document.
15th March.....	Order of Her Majesty in Council. (4 spare copies).

AT THE COURT AT WINDSOR,

The 15th day of March, 1893.

PRESENT:

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT,
LORD CHAMBERLAIN,
MR. BRYCE.

WHEREAS *there was this day read at the Board a Memorial from the Right Honourable the Lords Commissioners of the Admiralty, dated the 24th day of February*, 1893, *in the words following, viz.:—*

"WHEREAS by an Act passed in the fifty-fourth year of Your Majesty's reign, entitled, '*The Colonial Courts of Admiralty Act*, 1890,' it was, amongst other things, provided that Rules of Court for regulating the procedure and practice (including fees and costs) in a court in a British possession in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same Authority and in the same manner as rules touching the practice, procedure, fees, and costs in the said court in the

exercise of its ordinary civil jurisdiction respectively, are made, but that such rules of court shall not come into operation until they have been approved by Your Majesty in Council, but on coming into operation shall have full effect as if enacted in the said Act.

"And whereas it appears to Us and to Your Majesty's Secretary of State for the Colonies to be expedient that the Rules of Court hereto annexed, having been duly prepared by the proper Authority as required by the said Act, should be established and be in force in the Exchequer Court of Canada in its Admiralty jurisdiction.

"And whereas the provisions of subsection 2 of section 7 of the aforesaid Act empower Your Majesty in Council in approving rules made under this section to declare that the rules so made with respect to any matters which appear to Your Majesty to be matters of detail or of local concern may be revoked, varied, or added to, without the approval required by this section.

"And whereas it appears to Us that rules 158 to 176 relating to appeals from the judgment or order of a local Judge in Admiralty to the Exchequer Court; Rule 224, as to cases in which half fees only should be allowed; and the Tables of Fees appended to the Rules should be considered to come within the scope of the subsection in question, and be declared to be subject to revocation, variation, or addition, without the approval of Your Majesty in Council.

"Now, therefore, We beg leave humbly to recommend that Your Majesty will be graciously pleased by Your Order in Council to direct that the Rules of Court hereto annexed shall be the Rules of Court for the said Exchequer Court of Canada in its Admiralty jurisdiction, and shall be established and be in force in the said court, and to declare that Rules 158 to 176 (both inclusive), Rule 224, and the Tables of Fees appended to the Rules, may be revoked, varied or added to without the approval of Your Majesty in Council."

Her Majesty, having taken the said Memorial into consideration, was pleased, by and with the advice of Her Privy Council to approve of what is therein proposed, and to direct that the Rules of Court hereto annexed shall be the Rules of Court for the said Exchequer Court of Canada in its Admiralty jurisdiction and shall be established and be in force in the said court, and to declare that Rules 158 to 176 (both inclusive), Rule 224, and the Tables of fees appended to the Rules, may be revoked, varied, or added to without the approval of Her Majesty in Council. And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary direction herein accordingly.

C. L. PEEL.

GENERAL RULES AND ORDERS

REGULATING THE

PRACTICE AND PROCEDURE IN

ADMIRALTY CASES IN THE EXCHEQUER COURT OF CANADA.

In pursuance of the provisions of "*The Colonial Courts of Admiralty Act*, 1890" and of "*The Admiralty Act*, 1891," (Canada), it is ordered that the following rules of court for regulating the practice and procedure (including fees and costs) of the Exchequer Court of Canada in the exercise of its jurisdiction, powers and authority as a Court of Admiralty shall be in force in the said Court.

1. In the construction of these rules, and of the forms and tables of fees annexed thereto, the following terms shall (if not inconsistent with the context or subject-matter) have the respective meanings hereinafter assigned to them; that is to say:—

(*a.*) Words importing the singular number include the plural number, and words importing the plural number include the singular number;

(*b.*) Words importing the masculine gender include females;

(*c.*) "District shall mean an Admiralty district constituted by or by virtue of *The Admiralty Act*, 1891; and in respect of proceedings in the registry of the court at Ottawa shall include the whole of Canada;

(*d.*) "Court" or "Exchequer Court" shall mean the Exchequer Court of Canada;

(*e.*) "Registry" shall mean the registry of the court, or any district registry thereof;

(*f.*) "Judge" shall mean the judge of the court, or a local judge in admiralty of the court, or any person lawfully authorized to act as judge thereof;

(*g.*) "Registrar" shall mean the registrar of the court, or any deputy, assistant or district registrar thereof;

(*h.*) "Marshal" shall mean the marshal of the court, or any deputy, assistant or district marshal thereof, or any sheriff or coroner authorized to perform the duties and functions of a sheriff in connection with the court;

(*i.*) "Action" shall mean any action, cause, suit, or other proceeding instituted in the court;

(*j.*) "Counsel" shall mean any advocate, barrister-at-law, or other person entitled to practise in the court;

(*k.*) "Solicitor" shall mean any proctor, solicitor or attorney entitled to practise in the court;

(*l.*) "Plaintiff" shall include the plaintiff's solicitor, if he sues by a solicitor;

(*m.*) "Defendant" shall include the defendant's solicitor, if he appears by a solicitor;

(*n.*) "Party" shall include the party's solicitor, if he sues or appears by a solicitor;

(*o.*) "Person" or "party" shall include a body corporate or politic;

(*p.*) "Ship" shall include every description of vessel used in navigation not propelled by oars only;

(*q.*) "Month" shall mean calendar month.

Actions.

2. Actions shall be of two kinds, actions *in rem* and actions *in personam*.

3. Actions for condemnation of any ship, boat, cargo, proceeds, slaves, or effects, or for recovery of any pecuniary forfeiture or penalty, shall be instituted in the name of the Crown.

4. All actions shall be entitled in the court, and shall be numbered in the order in which they are instituted, and the number given to any action shall be the distinguishing number of the action, and shall be written or printed on all documents in the action as part of the title thereof. Forms of the title of the court and of the title of an action will be found in the Appendix hereto, Nos. 1, 2, 3 and 4.

Writ of Summons.

5. Every action shall be commenced by a writ of summons which, before being issued, shall be indorsed with a statement of the nature of the claim, and of the relief or remedy required, and of the amount claimed, if any. Forms of writ of summons and of the indorsements thereon will be found in the Appendix hereto, Nos. 5, 6, 7, 9 and 10.

6. In an action for seaman's or master's wages, or for mariner's wages and disbursements, or for necessaries, or for bottomry, or in any mortgage action, or in any action in which the Plaintiff desires an account, the indorsement on the writ of summons may include a claim to have an account taken.

7. The writ of summons shall be indorsed with the name and address of the Plaintiff, and with an address to be called an address for service, not more than three miles from the registry, at which it shall be sufficient to leave all documents required to be served upon him.

8. The writ of summons shall be prepared and indorsed by the Plaintiff, and shall be issued under the seal of the court, and a copy of the writ and of all the indorsements thereon, signed by the Plaintiff, shall be left in the registry at the time of sealing the writ.

9. The judge may allow the Plaintiff to amend the writ of summons and the indorsements thereon in such manner and on such terms as to the judge shall seem fit.

SERVICE OF WRIT OF SUMMONS.

10. In an action *in rem*, the writ of summons shall be served—

(*a.*) upon ship, or upon cargo, freight, or other property, if the cargo or other property is on board a ship, by attaching the writ for a short time to the main-mast or the single mast, or to some other conspicuous part of the ship, and by leaving a copy of the writ attached thereto;

(*b.*) upon cargo, freight, or other property, if the cargo or other property is not on board a ship, by attaching the writ for a short time to such cargo or property, and by leaving a copy of the writ attached thereto;

(*c.*) upon freight in the hands of any person, by showing the writ to him and by leaving with him a copy thereof;

(*d.*) upon proceeds in court, by showing the writ to the registrar and by leaving with him a copy thereof.

11. If access cannot be obtained to the property on which it is to be served, the writ may be served by showing it to any person appearing to be in charge of such property, and by leaving with him a copy of the writ.

12. In an action *in personam*, the writ of summons shall be served by showing it to the Defendant, and by leaving with him a copy of the writ.

13. A writ of summons against a firm may be served upon any member of the firm, or upon any person appearing at the time of service to have the management of the business of the firm.

14. A writ of summons against a corporation may be served upon the mayor, or other head officer, or upon the town clerk, clerk, treasurer or secretary of the corporation and a writ of summons against a public company may be served upon the secretary of the company, or may be left at the office of the company.

15. A writ of summons against a corporation or a public company may be served in any other mode provided by law for service of any other writ or legal process upon such corporation or company.

16. If the person to be served is under disability, or if for any cause personal service cannot, or cannot promptly, be effected, or if in any action, whether *in rem* or *in personam*, there is any doubt or difficulty as to the person to be served, or as to the mode of service, the judge may order upon whom, or in what manner service is to be made, or may order notice to be given in lieu of service.

17. The writ of summons, whether *in rem* or *in personam*, may be served by the Plaintiff or his agent within *twelve months* from the date thereof, and shall, after service, be filed with an affidavit of such service.

18. The affidavit shall state the date and mode of service and shall be signed by the person who served the writ. A form of affidavit of service will be found in the Appendix hereto, No. 11.

19. No service of a writ or warrant shall be required when the Defendant by his solicitor undertakes in writing to accept service thereof and enter an appearance thereto, or to put in bail, or to pay money into court in lieu of bail; and any solicitor not entering an appearance or putting in bail or paying money into court in lieu of bail in pursuance of his written undertaking so to do, shall be liable to attachment.

Service Out of Jurisdiction.

20. Service out of the jurisdiction of a writ of summons, or notice of a writ of summons, may be allowed by the judge whenever:—

(*a.*) Any relief is sought against any person domiciled or ordinarily resident within the territorial jurisdiction of the court;

(*b.*) The action is founded on any breach or alleged breach within the territorial jurisdiction of the court of any contract wherever made, which according to the terms thereof ought to be performed within such jurisdiction;

(*c.*) Any injunction is sought as to anything to be done within the territorial jurisdiction of the court;

(*d.*) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within such territorial jurisdiction.

21. Every application for leave to serve a writ of summons, or notice of a writ of summons, on a Defendant out of

the jurisdiction shall be supported by affidavit, or other evidence, stating that in the belief of the deponent the Plaintiff has a good cause of action, and showing in what place or country such Defendant is or probably may be found, and whether such Defendant is a British subject or not, and the grounds upon which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the judge that the case is a proper one for service out of the jurisdiction.

22. Any order giving leave to effect such service, or give such notice, shall limit a time after such service or notice within which such Defendant is to enter an appearance, such time to depend on the place or country, where or within which, the writ is to be served or the notice given.

23. When the Defendant is neither a British subject nor in British dominions, notice of the writ, and not the writ itself, is to be served upon him. A form of notice will be found in the Appendix hereto No. 8.

24. Notice in lieu of service shall be given in the manner in which writs of summons are served.

Appearance.

25. A party appearing to a writ of summons shall file an appearance at the place directed in the writ.

26. A party not appearing within the time limited by the writ may, by consent of the other parties or by permission of the judge, appear at any time on such terms as the judge shall order.

27. If the party appearing has a set-off or counter-claim against the Plaintiff, he may indorse on his appearance a statement of the nature thereof, and of the relief or remedy required, and of the amount, if any, of the set-off or counter-claim. But if in the opinion of the judge such set-off or counter-claim cannot be conveniently disposed of in the action, the judge may order it to be struck out.

28. The appearance shall be signed by the party appearing, and shall state his name and address, and an address, to be called an address for service, not more than three miles from the registry, at which it shall be sufficient to leave all documents required to be served upon him. Forms of Appearance and of Indorsment of set-off or counter-claim will be found in the Appendix hereto, Nos. 12 and 13.

Parties.

29. Any number of persons having interests of the same nature arising out of the same matter may be joined in the same action whether as Plaintiffs or as Defendants.

30. The judge may order any person who is interested in the action, though not named in the writ of summons, to come in either as Plaintiff or as Defendant.

31. For the purposes of the last preceding rule an underwriter or insurer shall be deemed to be a person interested in the action.

32. The judge may order upon what terms any person shall come in, and what notices and documents, if any, shall be given to and served upon him, and may give such further directions in the matter as to him shall seem fit.

Consolidation of Actions.

33. Two or more actions in which the questions at issue are substantially the same, or for matters which might properly be combined in one action, may be consolidated by order of the judge upon such terms as to him shall seem fit.

34. The judge, if he thinks fit, may order several actions to be tried at the same time, and on the same evidence, or the evidence in one action to be used as evidence in another, or may order one of several actions to be tried as a test action, and the other actions to be stayed to abide the result.

Warrants.

35. In an action *in rem*, a warrant for the arrest of property may be issued by the registrar at the time of, or at any time after, the issue of the writ of summons, on an affidavit being filed, as prescribed by the following rules. A form of affidavit to lead warrant will be found in the Appendix hereto, No. 14.

36. The affidavit shall state the nature of the claim, and that the aid of the court is required.

37. The affidavit shall also state—

(*a.*) In an action for wages, or possession, the national character of the ship, and if the ship is foreign, that notice of the action has been served upon a consular officer of the State to which the ship belongs, if there is one resident in the district within which the ship is at the time of the institution of the suit; and a copy of the notice shall be annexed to the affidavit;

(*b.*) In an action for necessaries, the national character of the ship, and that, to the best of the deponent's belief, no owner or part owner of the ship was domiciled within Canada at the time when the necessaries were supplied;

(*c.*) In an action for building, equipping, or repairing any ship, the national character of the ship and that at the time of the institution of the action, the ship, or the proceeds thereof, are under the arrest of the court;

(*d.*) In an action between co-owners relating to the ownership, possession, employment, or earnings of any ship registered in such district, the port at which the ship is registered and the number of shares in the ship owned by the party proceeding.

38. In an action for bottomry, the bottomry bond in original, and, if it is in a foreign language, a translation thereof, shall be produced for the inspection and perusal of the registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit.

39. The registrar, if he thinks fit, may issue a warrant, although the affidavit does not contain all the prescribed particulars, and, in an action for bottomry, although the bond has not been produced; or he may refuse to issue a warrant without the order of the judge.

40. The warrant shall be prepared in the registry, and shall be signed by the registrar, and issued under the seal of the court. A form of warrant will be found in the Appendix hereto, No. 15.

41. The warrant shall be served by the marshal, or his officer, in the manner prescribed by these rules for the service of a writ of summons in an action *in rem*, and thereupon the property shall be deemed to be arrested.

42. The warrant may be served on Sunday, Good Friday, or Christmas Day, or any public holiday, as well as on any other day.

43. The warrant shall be filed by the marshal within *one week* after service thereof has been completed, with a certificate of service indorsed thereon.

44. The certificate shall state by whom the warrant has been served, and the date and mode of service, and shall be signed by the marshal. A form of certificate of service will be found in the Appendix hereto, No. 16.

Bail.

45. Whenever bail is required by these rules, it shall be given by filing one or more bailbonds, each of which shall be signed by two sureties, unless the judge shall, on special cause shown, order that one surety shall suffice.

46. Every bailbond shall be signed before the registrar, or by his direction before a clerk in the registry, or before a commissioner having authority to take acknowledgments or

recognizances of bail in the court, or before a commissioner appointed by the court, to take bail. Forms of bailbond and commission to take bail will be found in the Appendix hereto, Nos. 17 and 18.

47. The sureties shall justify by affidavit and may attend to sign a bond either separately or together. A form of affidavit of justification will be found in the Appendix hereto, No. 19.

48. The commission to take bail and the affidavits of justification shall, with the bailbond, when executed, be returned to the registry by the commissioner.

49. No commissioner shall be entitled to take bail in any action in which he, or any person in partnership with him, is acting as solicitor or agent.

50. Before filing a bailbond, notice of bail shall be served upon the adverse party, and a certificate of such service shall be indorsed on the bond by the party filing it. A form of Notice of Bail will be found in the Appendix hereto, No. 20.

51. If the adverse party is not satisfied with the sufficiency of any surety, he may file a notice of objection to such surety. A form of Notice of Objection to Bail, will be found in the Appendix hereto, No. 21.

52. Upon such objection being filed with the registrar an appointment may be obtained for its consideration before him. Twenty-four hours' notice of such appointment shall be given to the Plaintiff unless the judge for special reasons allows a shorter notice to be given; and, on the return of the appointment, the registrar may hear the parties and any evidence they may adduce regarding the sufficiency of the sureties; and he may direct such sureties to submit themselves to cross-examination on their affidavits of justification; and he may allow or disallow the bond. He may adjourn the appointment from time to time if he thinks necessary, and shall himself make such inquiries respecting the sureties as he thinks fit.

Releases.

53. A release for property arrested by warrant may be issued by order of the judge.

54. A release may also be issued by the registrar, unless there is a caveat outstanding against the release of the property,—

(*a*.) On payment into court of the amount claimed, or of the appraised value of the property arrested, or, where cargo is arrested for freight only, of the amount of the freight verified by affidavit;

(*b.*) On one or more bailbonds being filed for the amount claimed, or for the appraised value of the property arrested, and on the allowance of the same if objected to; or if not objected to on proof that *twenty-four hours'* notice of the names and addresses of the sureties has been previously served on the party at whose instance the property has been arrested:

(*c.*) On the application of the party at whose instance the property has been arrested;

(*d.*) On a consent in writing being filed signed by the party at whose instance the property has been arrested;

(*e.*) On discontinuance or dismissal of the action in which the property has been arrested.

55. Where property has been arrested for salvage, the release shall not be issued under the foregoing rule, except on discontinuance or dismissal of the action, until the value of the property arrested has been agreed upon between the parties or determined by the judge.

56. The registrar may refuse to issue a release without the order of the judge.

57. The release shall be prepared in the registry, and shall be signed by the registrar, and issued under the seal of the court. A form of release will be found in the Appendix hereto, No. 22.

58. The release shall be served on the marshal, either personally, or by leaving it at his office, by the party by whom it is taken out.

59. On service of the release and on payment to the marshal of all fees due to, and charges incurred by, him in respect of the arrest and custody of the property, the property shall be at once released from arrest.

Preliminary Acts.

60. In an action for damage by collision, each party shall, within *one week* from an appearance being entered, file a Preliminary Act, sealed up, signed by the party, and containing a statement of the following particulars:—

(1.) The names of the ships which came into collision, and the names of their masters;

(2.) The time of the collision;

(3.) The place of the collision;

(4.) The direction and force of the wind;

(5.) The state of the weather;

(6.) The state and force of the tide, or, if the collision occurred in non-tidal waters, of the current;

(7.) The course and speed of the ship when the other was first seen;

(8.) The lights, if any, carried by her;

(9.) The distance and bearing of the other ship when first seen;

(10.) The lights, if any, of the other ship which were first seen;

(11.) The lights, if any, of the other ship, other than those first seen, which came into view before the collision;

(12.) The measures which were taken, and when, to avoid the collision;

(13.) The parts of each ship which first came into collision;

(14.) What fault or default, if any, is attributed to the other ship.

PLEADINGS.

61. Every action shall be heard without pleadings, unless the judge shall otherwise order.

62. If an order is made for pleadings, the Plaintiff shall, within *one week* from the date of the order, file his statement of claim, and, within *one week* from the filing of the statement of claim, the Defendant shall file his statement of defence, and within *one week* from the filing of the statement of defence the Plaintiff shall file his reply, if any; and there shall be no pleading beyond the reply, except by permission of the judge.

63. The Defendant may, in his statement of defence, plead any set-off or counter-claim. But if, in the opinion of the judge, such set-off or counter-claim cannot be conveniently disposed of in the action, the judge may order it to be struck out.

64. Every pleading shall be divided into short paragraphs, numbered consecutively, which shall state concisely the facts on which the party relies; and shall be signed by the party filing it. Forms of pleadings will be found in the Appendix hereto, No. 23.

65. It shall not be necessary to set out in any pleading the words of any document referred to therein, except so far as the precise words of the document are material.

66. Either party may apply to the judge to decide forthwith any question of fact or of law raised by any pleading, and the judge shall thereupon make such order as to him shall seem fit.

67. Any pleading may at any time be amended, either by consent of the parties, or by order of the judge.

Interrogatories.

68. At any time before the action is set down for hearing any party, desirous of obtaining the answers of the adverse party on any matters material to the issue, may apply to the judge for leave to administer interrogatories to the adverse party to be answered on oath, and the judge may direct within what time and in what way they shall be answered, whether by affidavit or by oral examination.

69. The judge may order any interrogatory that he considers objectionable to be amended or struck out; and if the party interrogated omits to answer or answers insufficiently, the judge may order him to answer, or to answer further, and either by affidavit or by oral examination. Forms of interrogatories and of answers will be found in the Appendix hereto, Nos. 24 and 25.

Discovery and Inspection.

70. The judge may order any party to an action to make discovery, on oath, of all documents which are in his possession or power relating to any matter in question therein.

71. The affidavit of discovery shall specify which, if any, of the documents therein mentioned the party objects to produce. A form of affidavit of discovery will be found in the Appendix hereto, No 26.

72. Any party to an action may file a notice to any other party to produce, for inspection or transcription, any document in his possession or power relating to any matter in question in the action. A form of notice to produce will be found in the Appendix hereto, No. 27.

73. If the party served with notice to produce omits or refuses to do so within the time specified in the notice, the adverse party may apply to the judge for an order to produce.

Admission of Documents and Facts.

74. Any party may file a notice to any other party to admit any document or fact (saving all just exceptions), and a party not admitting it after such notice shall be liable for the costs of proving the document or fact, whatever the result of the action may be, unless the taxing officer is of opinion that there was sufficient reason for not admitting it. Forms of notice to admit will be found in the Appendix hereto, Nos. 28 and 29.

75. No costs of proving any document shall be allowed, unless notice to admit shall have been previously given, or the taxing officer shall be of opinion that the omission to give such notice was reasonable and proper.

Special Case.

76. Parties may agree to state the questions at issue for the opinion of the judge in the form of a special case.

77. If it appears to the judge that there is in any action a question of law which it would be convenient to have decided in the first instance, he may direct that it shall be raised in a special case or in such other manner as he may deem expedient.

78. Every special case shall be divided into paragraphs, numbered consecutively, and shall state concisely such facts and documents as may be necessary to enable the judge to decide the question at issue.

79. Every special case shall be signed by parties, and may be filed by any party.

Motions.

80. A party desiring to obtain an order from the judge shall file a notice of motion with the affidavits, if any, on which he intends to rely.

81. The notice of motion shall state the nature of the order desired, the day on which the motion is to be made, and whether in court or in chambers. A form of notice of motion will be found in the Appendix hereto, No. 30.

82. Except by consent of the adverse party, or by order of the judge, the notice of motion shall be filed *twenty-four hours* at least before the time at which the motion is made.

83. When the motion comes on for hearing, the judge, after hearing the parties, or, in the absence of any of them, on proof that the notice of motion has been duly served, may make such order as to him shall seem fit.

84. The judge may, on due cause shown, vary or rescind any order previously made.

Tenders.

85. A party desiring to make a tender in satisfaction of the whole or any part of the adverse party's claim, shall pay into court the amount tendered by him, and shall file a notice of the terms on which the tender is made. But the payment of money into court shall not be deemed an admission of the cause of action in respect of which it is paid.

86. Within *a week* from the filing of the notice the adverse party shall file a notice, stating whether he accepts or rejects the tender, and if he shall not do so, he shall be held to have rejected it. Forms of notice of tender and of notice accepting or rejecting it will be found in the Appendix hereto, Nos. 31 and 32.

87. Pending the acceptance or rejection of a tender, the proceedings shall be suspended.

Evidence.

88. Evidence shall be given either by affidavit or by oral examination, or partly in one mode, and partly in another.

89. Evidence on a motion shall in general be given by affidavit, and at the hearing by the oral examination of witnesses; but the mode or modes in which evidence shall be given, either on any motion or at the hearing, may be determined either by consent of the parties, or by order of the judge.

90. The judge may order any person who has made an affidavit in an action to attend for cross-examination thereon before the judge, or the registrar, or a commissioner specially appointed.

91 Witnesses examined orally before the judge, the registrar, or a commissioner, shall be examined, cross-examined, and re-examined in such order as the judge, registrar or commissioner may direct; and questions may be put to any witness by the judge, registrar, or commissioner as the case may be.

92. If any witness is examined by interpretation, such interpretation shall be made by a sworn interpreter of the court, or by a person previously sworn according to the form in the Appendix hereto, No. 33.

Oaths.

93. The judge may appoint any person to administer oaths in Admiralty proceedings generally, or in any particular proceedings. Forms of Appointments to administer oaths will be found in the Appendix hereto, No. 34.

94. If any person tendered for the purpose of giving evidence objects to take an oath, or is objected to as incompetent to take an oath, or is by reason of any defect of religious knowledge or belief incapable of comprehending the nature of an oath, the judge or person authorized to administer the oath shall, if satisfied that the taking of an oath would have no binding effect on his conscience, permit him, in lieu of an oath, to make a declaration. Forms of oath, and of declaration in lieu of oath will be found in the Appendix hereto, Nos. 35 and 36.

Affidavits.

95. Every affidavit shall be divided into short paragraphs numbered consecutively, and shall be in the first person.

96. The name, address, and description of every person making an affidavit shall be inserted therein.

97. The names of all the persons making an affidavit, and the dates when, and the places where it is sworn, shall be inserted in the jurat.

98. When an affidavit is made by any person who is blind, or who from his signature or otherwise appears to be illiterate, the person before whom the affidavit is sworn shall certify that the affidavit was read over to the deponent, and that the deponent appeared to understand the same, and made his mark or wrote his signature thereto in the presence of the person before whom the affidavit was sworn.

99. When an affidavit is made in English by a person who does not speak the English language, or in French by a person who does not speak the French language, the affidavit shall be taken down and read over to the deponent by interpretation either of a sworn interpreter of the court, or of a person previously sworn faithfully to interpret the affidavit. A form of jurat will be found in the Appendix hereto, No. 37.

100. Affidavits may, by permission of the judge, be used as evidence in an action, saving all just exceptions,—

(1.) If sworn to, in the United Kingdom of Great Britain and Ireland, or in any British Possession, before any person authorized to administer oaths in the said United Kingdom or in such Possession respectively;

(2.) If sworn to in any place not being a part of Her Majesty's dominions, before a British minister, consul, vice-consul, or notary public, or before a judge or magistrate, the signature of such judge or magistrate being authenticated by the official seal of the court to which he is attached.

101. The reception of any affidavit as evidence may be objected to, if the affidavit has been sworn before the solicitor for the party on whose behalf it is offered, or before a partner or clerk of such solicitor.

Examination of Witnesses before Trial.

102. The judge may order that any witness, who cannot conveniently attend at the trial of the action, shall be examined previously thereto, before either the judge, or the registrar, who shall have power to adjourn the examination from time to time, and from place to place, if he shall think necessary. A form of order for examination of witnesses will be found in the Appendix hereto, No. 38.

103. If the witness cannot be conveniently examined before the judge or the registrar, or is beyond the limits of the district, the judge may order that he shall be examined before a commissioner specially appointed for the purpose.

104. The commissioner shall have power to swear any witnesses produced before him for examination, and to adjourn, if necessary, the examination from time to time, and from place to place. A form of commission to examine witnesses will be found in the Appendix hereto, No. 39.

105. The parties, their counsel and solicitors, may attend the examination, but, if counsel attend, the fees of only one counsel on each side shall be allowed on taxation, except by order of the judge.

106. The evidence of every witness shall be taken down in writing, and shall be certified as correct or approved of by the judge, or registrar, or by the commissioner, as the case may be.

107. The certified evidence shall be lodged in the registry, or, if taken by commission, shall forthwith be transmitted by the commissioner to the registry, together with his commission. A form of return to commission to examine witnesses will be found in the Appendix hereto, No. 40.

108. As soon as the certified evidence has been received in the registry, it may be taken up and filed by either party, and may be used as evidence in the action, saving all just exceptions.

Shorthand Writers.

109. The judge may order the evidence of the witnesses whether examined before the judge, or the registrar, or a commissioner, to be taken down by a shorthand writer, who shall have been previously sworn faithfully to report the evidence, and a transcript of the shorthand writer's notes, certified by him to be correct and approved by the judge, registrar, or commissioner, as the case may be, shall be lodged in or transmitted to the registry as the certified evidence of such witnesses. The shorthand writer shall, in addition to such transcript thereof, supply to the registrar three copies of such transcript, one of which shall be handed to the judge and the others given to the Plaintiff and Defendant respectively. A form of oath to be administered to the shorthand writer will be found in the Appendix hereto, No. 41.

Printing.

110. The judge may order that the whole of the pleadings and written proofs, or any part thereof, shall be printed

before the trial; and the printing shall be in such manner and form as the judge shall order.

111. Preliminary Acts, if printed, shall be printed in parallel columns.

Assessors.

112. The judge, on the application of any party, or without any such application if he considers that the nature of the case requires it, may appoint one or more assessors to advise the court upon any matters requiring nautical or other professional knowledge.

113. The fees of the assessors shall be paid in the first instance by the Plaintiff, unless the judge shall otherwise order.

Setting down for Trial.

114. An action shall be set down for trial by filing a notice of trial. A form of notice of trial will be found in the Appendix hereto, No. 42.

115 If there has not been any appearance, the Plaintiff may set down the action for trial, on obtaining from the judge leave to proceed *ex parte*,—

(*a.*) In an action *in personam*, or an action against proceeds in court, after the expiration of *two weeks* from the service of the writ of summons;

(*b.*) In an action *in rem* (not being an action against proceeds in court), after the expiration of *two weeks* from the filing of the warrant.

116. If there has been an appearance, either party may set down the action for trial,—

(*a.*) After the expiration of *one week* from the entry of the appearance, unless an order has been made for pleadings, or an application for such an order is pending;

(*b.*) If pleadings have been ordered, when the last pleading has been filed, or when the time allowed to the adverse party for filing any pleading has expired without such pleading having been filed.

In collision cases the Preliminary Acts may be opened as soon as the action has been set down for trial.

117. Where the writ of summons has been indorsed with a claim to have an account taken, or the liability has been admitted or determined, and the question is simply as to the amount due, the judge may, on the application of either party, fix a time within which the accounts and vouchers, and the proofs in support thereof, shall be filed, and at the expiration of that time either party may have the matter set down for trial.

Trial.

118. After the action has been set down for trial, any party may apply to the judge, on notice to any other party appearing, for an order fixing the time and place of trial; or he may upon giving the opposite party ten days' notice, set the action down for trial at any sitting of the court duly appointed to be held by the judge.

119. At the trial of a contested action the Plaintiff shall in general begin. But if the burden of proof lies on the Defendant, the judge may direct the Defendant to begin.

120. If there are several Plaintiffs or several Defendants, the judge may direct which Plaintiff or which Defendant shall begin.

121. The party beginning shall first address the court, and then produce his witnesses, if any. The other party or parties shall then address the court, and produce their witnesses, if any, in such order as the judge may direct, and shall have a right to sum up their evidence. In all cases the party beginning shall have the right to reply, but shall not produce further evidence, except by permission of the judge.

122. Only one counsel shall in general be heard on each side; but the judge, if he considers that the nature of the case requires it, may allow two counsel to be heard on each side.

123. If the action is uncontested, the judge may, if he thinks fit, give judgment on the evidence adduced by the Plaintiff.

References.

124. The judge may, if he thinks fit, refer the assessment of damages and the taking of any account to the registrar either alone, or assisted by one or more merchants as assessors.

125. The rules as to evidence, and as to the trial, shall apply *mutatis mutandis* to a reference to the registrar, and the registrar may adjourn the proceedings from time to time, and from place to place, if he shall think necessary.

126. Counsel may attend the hearing of any reference, but the costs so incurred shall not be allowed on taxation unless the registrar shall certify that the attendance of counsel was necessary.

127. When a reference has been heard, the registrar shall draw up a report in writing of the result, showing the amount, if any, found due, and to whom, together with any further particulars that may be necessary. A form of the report will be found in the Appendix hereto, No. 43.

128. When the report is ready, notice shall be sent to the parties, and either party may thereupon take up and file the report.

129. Within *two weeks* from the filing of the registrar's report, either party may file a notice of motion to vary the report, specifying the items objected to.

130. At the hearing of the motion the judge may make such order thereon as to him shall seem fit, or may remit the matter to the registrar for further inquiry or report.

131. If no notice of motion to vary the report is filed within *two weeks* from filing the registrar's report, the report shall stand confirmed.

Costs.

132. In general costs shall follow the result; but the judge may in any case make such order as to the costs as to him shall seem fit.

133. The judge may direct payment of a lump sum in lieu of taxed costs.

134. If any Plaintiff (other than a seaman suing for his wages or for the loss of his clothes and effects in a collision), or any Defendant making a counter-claim, is not resident in the district in which the action is instituted, the judge may, on the application of the adverse party, order him to give bail for costs.

135. A party claiming an excessive amount, either by way of claim, or of set-off or counter-claim, may be condemned in all costs and damages thereby occasioned.

136. If a tender is rejected, but is afterwards accepted, or is held by the judge to be sufficient, the party rejecting the tender shall, unless the judge shall otherwise order, be condemned in the costs incurred after tender made.

137. A party, who has not admitted any fact which in the opinion of the judge he ought to have admitted, may be condemned in all costs occasioned by the non-admission.

138. Any party pleading at unnecessary length or taking any unnecessary proceeding in an action may be condemned in all costs thereby occasioned.

Taxation of Costs.

139. A party desiring to have a bill of costs taxed shall file the bill, and shall procure an appointment from the registrar for the taxation thereof, and shall serve the opposite party with notice of the time at which such taxation will take place.

140. At the time appointed, if either party is present, the taxation shall be proceeded with.

141. Within *one week* from the completion of the taxation application may be made, by either party, to the judge to review the taxation.

142. Costs may be taxed either by the judge or by the registrar, and as well between solicitor and client, as between party and party.

143. If in a taxation between solicitor and client more than *one-sixth* of the bill is struck off, the solicitor shall pay all the costs attending the taxation.

144. The fees to be taken by any district registrar shall, if either party desires it, be taxed by the judge.

Appraisement and Sale, &c.

145. The judge may, either before or after final judgment, order any property under the arrest of the court to be appraised, or to be sold with or without appraisement, and either by public auction or by private contract, and may direct what notice by advertisement or otherwise shall be given or may dispense with the same.

146. If the property is deteriorating in value, the judge may order it to be sold forthwith.

147. If the property to be sold is of small value, the judge may, if he thinks fit, order it to be sold without a commission of sale being issued.

148. The judge may, either before or after final judgment, order any property under arrest of the court to be removed, or any cargo under arrest on board ship to be discharged.

149. The appraisement, sale, and removal of property, the discharge of cargo, and the demolition and sale of a vessel condemned under any Slave Trade Act, shall be effected under the authority of a commission addressed to the marshal. Forms of commissions of appraisement, sale, appraisement and sale, removal, discharge of cargo and demolition and sale will be found in the Appendix hereto, Nos. 44 to 49.

150. The commission shall, as soon as possible after its execution, be filed by the marshal, with a return setting forth the manner in which it has been executed.

151. As soon as possible after the execution of a commission of sale, the marshal shall pay into court the gross proceeds of the sale, and shall with the commission file his accounts and vouchers in support thereof.

152. The registrar shall tax the marshal's account, and shall report the amount at which he considers it should be allowed; and any party who is interested in the proceeds may be heard before the registrar on the taxation.

153. Application may be made to the judge on motion to review the registrar's taxation.

154. The judge may, if he thinks fit, order any property under the arrest of the court to be inspected. A form of order for inspection will be found in the Appendix hereto, No. 50.

Discontinuance.

155. The Plaintiff may, at any time, discontinue his action by filing a notice to that effect, and the Defendant shall thereupon be entitled to have judgment entered for his costs of action on filing a notice to enter the same. The discontinuance of an action by the Plaintiff shall not prejudice any action consolidated therewith or any counter-claim previously set up by the Defendant. Forms of notice of discontinuance and of notice to enter judgment for costs will be found in the Appendix hereto, Nos. 51 and 52.

Consents.

156. Any consent in writing signed by the parties may, by permission of the registrar, be filed, and shall thereupon become an order of court.

Certificate of State of Action.

157. Upon the application of any person the registrar shall, upon payment of the usual fee, certify as shortly as he conveniently can, the several proceedings had in his office in any action or matter, and the dates thereof.

Appeal From the Judgment or Order of a Local Judge in Admiralty to the Exchequer Court.

158. Any person who desires to appeal to the Exchequer Court, from any judgment or order of a Local Judge in Admiralty of the said court, shall give security in the sum of two hundred dollars if such judgment or order is final, or if interlocutory, in the sum of one hundred dollars, to the satisfaction of such local judge, or of the judge of the Exchequer Court, that he will effectually prosecute his appeal and pay such costs as may be awarded against him by the Exchequer Court. If the appeal is by or on behalf of the Crown, no security shall be necessary.

159. All appeals to the Exchequer Court from any judgment or order of any Local Judge in Admiralty of the court shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state

whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part. A form of notice of motion on appeal will be found in the Appendix hereto, No. 53.

160. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Exchequer Court may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as the Exchequer Court may think fit.

161. Notice of appeal from any judgment, whether final or interlocutory, or from a final order, shall be a *twenty days'* notice, and notice of appeal from any interlocutory order shall be a *ten days'* notice.

162. The Exchequer Court shall in any appeal have all its powers and duties as to amendment and otherwise, together with full discretionary power to receive further evidence upon questions of fact,—such evidence to be either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after the trial or hearing of any cause or matter upon their merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the court. The court shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such power may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The court shall have power to make such order as to the whole or any part of the costs of the appeal as may be just.

163. If, upon the hearing of any appeal, it shall appear to the Exchequer Court, that a new trial ought to be had, it shall be lawful for the said court, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had.

164. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross-appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the local judge in Admiralty should be varied, he shall within the time specified in the next rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be effected by such contention. The omission to give such notice shall not in any way interfere with the power of the court on the hearing of the appeal to treat the whole case as open, but may, in the discretion of the court, be ground for an adjournment of the appeal, or for a special order as to costs.

165. Subject to any special order which may be made, notice by a respondent under the last preceding rule shall, in the case of any appeal from a final judgment, be a *fourteen days*' notice, and, in the case of an appeal from an interlocutory order, a *seven days*' notice.

166. The party appealing from a judgment or order shall produce to the registrar of the Exchequer Court the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list unless the Judge of the Exchequer Court shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

167. Where an *ex parte* application has been refused by the Local Judge in Admiralty, an application for a similar purpose may be made to the Exchequer Court *ex parte* within *ten days* from the date of such refusal, or within such enlarged time as the Judge of the Exchequer Court may allow.

168. When any question of fact is involved in an appeal, the evidence taken before the Local Judge in Admiralty bearing on such question shall, subject to any special order, be brought before the Exchequer Court as follows:—

(*a.*) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed;

(*b.*) As to any evidence given orally, by the production of a copy of the judge's notes, or such other materials as the court may deem expedient.

169. Where evidence has not been printed in the proceedings before the Local Judge in Admiralty, the Local Judge in Admiralty, or the Judge of the Exchequer Court, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the

purpose of an appeal without such order shall bear the costs thereof, unless the Judge of the Exchequer Court shall otherwise order.

170. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the Local Judge, the Exchequer Court shall have regard to verified notes or other evidence, and to such other materials as the court may deem expedient.

171. Upon any appeal to the Exchequer Court no interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Exchequer Court from giving such decision upon the appeal as may be just.

172. No appeal to the Exchequer Court from any interlocutory order, or from any order, whether final or interlocutory, in any matter not being an action, shall, except by special leave of the Exchequer Court, be brought after the expiration of *thirty days*, and no other appeal shall, except by such leave, be brought after the expiration of *sixty days*. The said respective periods shall be calculated, in the case of an appeal from an order in Chambers, from the time when such order was pronounced, or when the appellant first had notice thereof, and in all other cases, from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal.

173. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Local Judge in Admiralty, or the Exchequer Court may order; and no intermediate act or proceeding shall be invalidated, except so far as the Judge of the Exchequer Court may direct.

174. Wherever under Rules 158 to 176 an application may be made either to the Local Judge in Admiralty or to the Exchequer Court, or the Judge thereof, it shall be made in the first instance to the Local Judge in Admiralty.

175. Every application in respect to any appeal to the Exchequer Court or the judge thereof shall be by motion.

176. On appeal from a Local Judge in Admiralty, interest for such time as execution has been delayed by the appeal shall be allowed unless the Local Judge otherwise orders, and the taxing officer may compute such interest without any order for that purpose.

Payments into Court.

177. All moneys to be paid into court shall be paid, upon receivable orders to be obtained in the registry, to the account of the registrar at some bank in the Dominion of Canada to be approved by the judge, or, with the sanction of the Treasury Board, into the Treasury of the Dominion. A form of receivable order will be found in the Appendix hereto, No. 54.

178. A bank or Treasury receipt for the amount shall be filed, and thereupon the payment into court shall be deemed to be complete.

Payments out of Court.

179. No money shall be paid out of court except upon an order signed by the judge. On signing a receipt to be prepared in the registry, the party to whom the money is payable under the order will receive a cheque for the amount signed by the registrar, upon the bank in which the money has been lodged, or an order upon the Treasurer in such form as the Treasury Board shall direct. A form of order for payment out of court will be found in the Appendix hereto, No. 55.

Caveats.

180. Any person desiring to prevent the arrest of any property may file a notice, undertaking, within *three days* after being required to do so, to give bail to any action or counter-claim that may have been, or may be, brought against the property, and thereupon the registrar shall enter a caveat in the caveat warrant book hereinafter mentioned. Forms of notice and of caveat warrant will be found in the Appendix hereto, Nos. 56 and 57.

181. Any person desiring to prevent the release of any property under arrest, shall file a notice, and thereupon the registrar shall enter a caveat in the caveat release book hereinafter mentioned. Forms of notice and of caveat release will be found in the Appendix hereto, Nos. 58 and 59.

182. Any person desiring to prevent the payment of money out of court shall file a notice, and thereupon the registrar shall enter a caveat in the caveat payment book hereinafter mentioned. Forms of notice and of caveat payment will be found in the Appendix hereto, Nos. 60 and 61.

183. If the person entering a caveat is not a party to the action, the notice shall state his name and address, and an address within three miles of the registry at which it shall be sufficient to leave all documents required to be served upon him.

184. The entry of a caveat warrant shall not prevent the issue of a warrant, but a party at whose instance a warrant shall be issued for the arrest of any property in respect of which there is a caveat warrant outstanding, shall be condemned in all costs and damages occasioned thereby, unless he shall show to the satisfaction of the judge good and sufficient reason to the contrary.

185. The party at whose instance a caveat release or caveat payment is entered, shall be condemned in all costs and damages occasioned thereby, unless he shall show to the satisfaction of the judge good and sufficient reason to the contrary.

186. A caveat shall not remain in force for more than *six months* from the date of entering the same.

187. A caveat may at any time be withdrawn by the person at whose instance it has been entered, on his filing a notice withdrawing it. A form of notice of withdrawal will be found in the Appendix hereto, No. 62.

188. The judge may overrule any caveat.

Subpœnas.

189. Any party desiring to compel the attendance of a witness shall serve him with a subpœna, which shall be prepared by the party and issued under the seal of the court. Forms of subpœnas will be found in the Appendix hereto, Nos. 63 and 64.

190. A subpœna may contain the names of any number of witnesses, or may be issued with the names of the witnesses in blank.

191. Service of the subpœna must be personal, and may be made by the party or his agent, and shall be proved by affidavit.

Orders for Payment.

192. On application by a party to whom any sum has been found due, the judge may order payment to be made out of any money in court applicable for the purpose.

If there is no such money in court, or if it is insufficient, the judge may order that the party liable shall pay the sum found due, or the balance thereof, as the case may be, within such time as to the judge shall seem fit. The party to whom the sum is due may then obtain from the registry and serve upon the party liable an order for payment under seal of the court. A form of order for payment will be found in the Appendix hereto, No. 65.

Attachments.

193. If any person disobeys an order of the court, or commits a contempt of court, the judge may order him to be attached. A form of attachment will be found in the Appendix hereto, No. 66

194. The person attached shall, without delay be brought before the judge, and if he persists in his disobedience or contempt, the judge may order him to be committed. Forms of order for committal and of committal will be found in the Appendix hereto, Nos. 67 and 68

The order for committal shall be executed by the marshal.

EXECUTION.

195. Any decree or order of the court, made in the exercise of its Admiralty jurisdiction, may be enforced in the same manner as a decree or order made in the exercise of the ordinary civil jurisdiction of the court may be enforced.

SEALS.

196. The seals to be used in the registry and district registries shall be such as the Judge of the Exchequer Court may from time to time direct.

INSTRUMENTS, &C.

197. Every warrant, release, commission, attachment, and other instrument to be executed by any officer of, or commissioner acting under the authority of, the court, shall be prepared in the registry and signed by the registrar, and shall be issued under the seal of the court.

198. Every document issued under the seal of the court shall bear date on the day of sealing and shall be deemed to be issued at the time of the sealing thereof.

199 Every document requiring to be served shall be served within *twelve months* from the date thereof, otherwise the service shall not be valid

200. Every instrument to be executed by the marshal shall be left with the marshal by the party at whose instance it is issued, with written instructions for the execution thereof.

NOTICES FROM THE REGISTRY.

201. Any notice from the registry may be either left at, or sent by post by registered letter, to the address for service of the party to whom notice is to be given; and the day next after the day on which the notice is so posted shall be considered as the day of service thereof, and the posting thereof as aforesaid shall be a sufficient service.

FILING.

202. Documents shall be filed by leaving the same in the registry, with a minute stating the nature of the document and the date of filing it. A form of minute on filing any document will be found in the Appendix hereto, No. 69.

203. Any number of documents in the same action may be filed with one and the same minute.

TIME.

204. If the time for doing any act or taking any proceeding in an action expires on a Sunday, or on any other day on which the registry is closed, and by reason thereof such act or proceeding cannot be done or taken on that day, it may be done or taken on the next day on which the registry is open.

205. Where, by these rules or by any order made under them, any act or proceeding is ordered or allowed to be done within or after the expiration of a time limited from or after any date or event, such time, if not limited by hours, shall not include the day of such date or of the happening of such event, but shall commence on the next following day.

206. The judge may, on the application of either party, enlarge or abridge the time prescribed by these rules or forms or by any order made under them for doing any act or taking any proceeding, upon such terms as to him shall seem fit, and any such enlargement may be ordered although the application for the same is not made until after he expiration of the time prescribed.

Sittings of the Court.

207. The judge shall appoint proper and convenient times for sittings in court and in chambers, and may adjourn the proceedings from time to time and from place to place as to him shall seem fit.

Registry and Registrar.

208. The registry shall be open to suitors during fixed hours to be appointed by the judge.

209. The registrar shall obey all the lawful directions of the judge. He shall in person, or by a deputy approved of by the judge, attend all sittings whether in court or in chambers, and shall take minutes of all the proceedings. He shall have the custody of all records of the court. He shall not act as counsel or solicitor in the court.

Marshal.

210. The marshal shall execute by himself or his officer all instruments issued from the court which are addressed to him, and shall make returns thereof.

211. Whenever, by reason of distance or other sufficient cause, the marshal cannot conveniently execute any instrument in person, he shall employ some competent person as his officer to execute the same.

Holidays.

212. The registry and the marshal's office shall be closed on Sundays, Good Friday, Easter Monday, Easter Tuesday, and Christmas Day, and on such days as are appointed by law or by proclamation to be kept as holidays or fast days.

Records of the Court.

213. There shall be kept in the registry a book, to be called the minute book, in which the registrar shall enter in order of date, under the head of each action, and on a page numbered with the number of the action, a record of the commencement of the action, of all appearances entered,

all documents issued or filed, all acts done, and all orders and decrees of the court, whether made by the judge, or by the registrar, or by consent of the parties in the action. Forms of minute of order of court, of minute on examination of witnesses, of minute of decree, and of minutes in an action for damage by collision, will be found in the Appendix hereto, Nos. 70 to 73.

214. There shall be kept in the registry a caveat warrant book, a caveat release book, and a caveat payment book, in which all such caveats, respectively, and the withdrawal thereof, shall be entered by the registrar.

215. Any solicitor may inspect the minute and caveat books.

216. The parties to an action may, while the action is pending, and for *one year* after its termination, inspect, free of charge, all the records in the action.

217. Except as provided by the two last preceding rules, no person shall be entitled to inspect the records in a pending action without the permission of the registrar.

218. In an action which is terminated, any person may on payment of a search fee, inspect the records in the action.

COPIES.

219. Any person entitled to inspect any document in an action shall, on payment of the proper charges for the same, be entitled to an office copy thereof under seal of the court.

FORMS.

220. The forms in the Appendix to these rules shall be followed with such variations as the circumstances may require, and any party using any other forms shall be liable for any costs occasioned thereby.

FEES.

221. Subject to the following rules, the fees set forth in the tables of fees in the Appendix hereto shall be allowed on taxation.

222. In any proceeding instituted in the registry at Ottawa the fees to be taken by the registrar shall be paid in stamps, and the proceeds of the sale of such stamps shall be paid into the Consolidated Revenue Fund of Canada.

223. Where the fee is per folio, the folio shall be counted at the rate of 100 words, and every numeral, whether contained in columns or otherwise written, shall be counted and charged for as a word.

224. Where the sum in dispute does not exceed $200, or the value of the *res* does not exceed $400, one-half only of the fees (other than disbursements) set forth in the Table hereto annexed shall be charged and allowed.

225. Where costs are awarded to a Plaintiff, the expression "sum in dispute" shall mean the sum recovered by

him in addition to the sum, if any, counter-claimed from him by the Defendant; and where costs are awarded to a Defendant, it shall mean the sum claimed from him in addition to the sum, if any, recovered by him.

226. The judge may, in any action, order that half fees only shall be allowed.

227. If the same practitioner acts as both counsel and solicitor in an action, he shall not for any proceeding be allowed to receive fees in both capacities, nor to receive a fee as counsel where the act of a solicitor only is necessary.

Cases not Provided for.

228. In all cases not provided for by these Rules the practice for the time being in force in respect to Admiralty proceedings in the High Court of Justice in England shall be followed.

Commencement of Rules.

229. These Rules shall come into force on the day on which notice of the approval thereof by His Excellency the Governor-General in Council, and by Her Majesty in Council shall be published in the *Canada Gazette*, and shall apply to all actions then pending in the Exchequer Court of Canada on its Admiralty side, as well as to actions commenced on and after such day.

Repealing Clause.

230. From and after the day on which the notice of the approval of these Rules by His Excellency the Governor-General in Council and by Her Majesty in Council is published in the *Canada Gazette*, the following rules and regulations, together with all forms thereto annexed, and the table of fees now in force in the Exchequer Court in Admiralty proceedings, shall, in respect to any such proceeding in such court be repealed:—

(a.) The rules and tables of fees for the Vice-Admiralty Courts established by an Order of Her Majesty in Council of the 23rd day of August, 1883; and

(b.) The rules and regulations and the table of fees previously in force in the Maritime Court of Ontario, and made by the judge of such court on the 31st day of January, 1889, and approved by His Excellency the Governor-General in Council on the 14th day of February, 1889, and all rules of the said Maritime Court of Ontario.

Dated, at Ottawa, this 5th day of December, A. D. 1892.

GEO. W. BURBIDGE,
J. E. C.

APPENDIX.

I. FORMS.

No. 1.

TITLE OF COURT.

Rule 4. IN THE EXCHEQUER COURT OF CANADA.

IN ADMIRALTY.

or (*if instituted in a District Registry*)

IN THE EXCHEQUER COURT OF CANADA.

THE QUEBEC (*or as the case may be*) ADMIRALTY DISTRICT.

No. 2.

Rule 4. TITLE OF ACTION IN REM

[*Title of court.*]

No. ___[*here insert the number of the action*].

A.B., Plaintiff,

against

(*a.*) The Ship _____.

or (*b.*) The Ship _____and freight.

or (*c.*) The Ship _____ her cargo and freight.

or (*if the action is against cargo only*),

(*d.*) The cargo *ex* the Ship [*state name of ship on board of which the cargo now is or lately was laden*].

or (*if the action is against the proceeds realized by the sale of the ship or cargo*),

(*e.*) The proceeds of the Ship_____.

or (*f.*) The proceeds of the cargo *ex* the Ship._____

or as the case may be.

Action for [*state nature of action, whether for damage by collision, wages, bottomry, &c., as the case may be.*]

No. 3.

TITLE OF ACTION IN PERSONAM.

Rule 4.

[*Title of court*]

No. ____[*here insert the number of the action.*]

A.B., Plaintiff

against

The Owners of the Ship _____, [*or as the case may be*].

Action for [*state nature of action as in preceding form.*]

No. 4.

TITLE OF ACTION IN THE NAME OF THE CROWN.

Rule 4.

[*Title of court.*]

No. [*insert number of action*].

Our Sovereign Lady the Queen.

[*add, where necessary,* in Her Office of Admiralty].

against

(*a.*) The Ship _____, [*or as the case may be*],

or,

(*b.*) A.B., &c. [*the person or persons proceeded against*].

Action for [*state nature of action*].

No. 5.

WRIT OF SUMMONS IN REM.

Rule 5.

(L.S.) [*Title of court and action.*]

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

To the owners and all others interested in the Ship _____ [her cargo and freight, *&c., or as the case may be.*]

WE command you that, within *one week* after the service of this writ, exclusive of the day of such service, you do cause an appearance to be entered for you in Our Exchequer Court of Canada in the above-named action; and take notice that in default of your so doing the said action may proceed, and judgment may be given, in your absence.

Given at Ottawa (*or as the case may be*) in Our said court, under the seal thereof, this ____ day of _____ 18____

Memorandum to be subscribed on the Writ.

This writ may be served within *twelve months* from the date thereof, exclusive of the day of such date, but not afterwards.

The Defendant (*or* Defendants) may appear hereto by entering an appearance (*or* appearances) either personally or by solicitor at the registry of the said court situate at Ottawa (*or as the case may be*).

No. 6.

Rule 5. WRIT OF SUMMONS IN PERSONAM.

[*Title of court and action.*]

(L.S.)

VICTORIA, by the grace of God, &c.

To *C.D.*, of _____, and *E.F.*, of _____

We command you that, within *one week* after the service of this writ, exclusive of the day of such service, you do cause an appearance to be entered for you in our Exchequer Court of Canada, in the above-named action; and take notice that in default of your so doing the said action may proceed, and judgment may be given, in your absence.

Given at Ottawa (*or as the case may be*) in Our said court, under the seal thereof, this day of 18 __

Memorandum to be subscribed on the Writ.

This writ may be served within *twelve months* from the date thereof, exclusive of the day of such date, but not afterwards.

The Defendant (*or* Defendants) may appear hereto by entering an appearance (*or* appearances) either personally or by solicitor at the registry of the said court situate at Ottawa (*or as the case may be*).

No. 7.

WRIT OF SUMMONS IN PERSONAM FOR SERVICE OUT OF JURISDICTION. Rules 5-20-23.

(L.S.)

[*Title of court and action.*]

VICTORIA, by the grace of God, &c.

To *C. D.*, of_____, *E. F.*, of_____

We command you that within (*here insert the number of days directed by the Judge ordering the service or notice*) after the service of this writ (*or notice of this writ, as the case may be,*) on you, inclusive of the day of such service, you do cause an appearance to be entered for you in Our Exchequer Court of Canada, in the above named action, and take notice that in default of your so doing the Plaintiff may proceed therein, and judgment may be given in your absence. Given at Ottawa (*or as the case may be*) in Our said court, under the seal thereof, this _____day of_____ 18_.

Memorandum to be subscribed on Writ as in Form No. 6.

Indorsement to be made on the Writ before the issue thereof:—

N.B.—This writ is to be used where the Defendant or all the Defendants, or one or more Defendant or Defendants, is or are out of the jurisdiction. When the Defendant to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself, is to be served upon him.

No. 8.

NOTICE IN LIEU OF WRIT FOR SERVICE OUT OF JURISDICTION. Rules 23-24

[*Title of court and action.*]

To *C. D.*, of

Take notice that *A. B.*, of , has commenced an action against you *C. D.* in the Exchequer Court of Canada at Ottawa, (or in the Admiralty District, *as the case may be,*) by writ of that court, dated the_____ day of_____, A.D. 18 ; which writ is indorsed as follows: (*Copy in full the indorsements*), and you are required within_____ days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said court to the said action, and in default of your so doing the said A. B. may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the office of the registrar of the said court at Ottawa) *or* at in the_____Admiralty District, *as the case may be*).

(Signed,) *A. B.*, of_____ &c.,

Or, *X. Y.*, of_____

Solicitor for *A. B.*

No. 9.

Rule 5. INDORSEMENTS TO BE MADE ON THE WRIT BEFORE ISSUE THEREOF.

(1.) The Plaintiff claims [*insert description of claim as given in Form No.* 10].

(2.) This writ was issued by the Plaintiff in person, who resides at [*state Plaintiff's place of residence, with name of street and number of house, if any*].

or,

This writ was issued by *C. D.*, of [*state place of business*] solicitor for the Plaintiff.

(3.) All documents required to be served upon the said Plaintiff in the action may be left for him at [*insert address for service within three miles of the registry*].

or,

Where the action is in the name of the Crown:—

(1.) *A. B.*, &c., claims [*insert description of claim as given in Form No.* 10].

(2.) This writ was issued by *A. B.* [*state name and address of person prosecuting in the name of the Crown, or his solicitor, as the case may be*].

(3.) All documents required to be served upon the Crown in this action may be left at [*insert address for service within three miles of the registry*].

No. 10.

Rule 5. INDORSEMENTS OF CLAIM.

(1.) *Damage by collision:*

The Plaintiffs as owners of the Ship "Mary" [her cargo and freight, *&c., or as the case may be*] claim the sum of $ against the Ship "Jane" for damage occasioned by a collision which took place [*state where*] on the_____day of _____, and for costs.

(2.) *Salvage:*

The Plaintiffs, as the owners, master, and crew of the Ship "Mary," claim the sum of $ for salvage services rendered by them to the Ship "Jane" [her cargo and freight *&c., or as the case may be*] on the day of 18—, in or near [*state where the services were rendered*], and for costs.

(3.) *Pilotage:*

The Plaintiff claims the sum of $ for pilotage of the Ship "Jane" on the day of 18 from [*state where pilotage commenced*] to [*state where pilotage ended*], and for costs.

(4.) *Towage:*

The Plaintiffs, as owners of the Ship "Mary," claim the sum of $ for towage services rendered by the said Ship to the Ship "Jane" [her cargo and freight, *&c., or as the case may be*] on the day of 18 , at or near [*state where the services were rendered*], and for costs. Rule 6.

(5.) *Master's wages and disbursements:*

The Plaintiff claims the sum of $, for his wages and disbursements as master of the Ship "Mary," and to have an account taken thereof, and for costs.

(6.) *Seamen's wages:*

The Plaintiffs, as seamen on board the Ship "Mary" claim the sum of $, for wages due to them, as follows, and for costs:

to *A.B.*, the mate, $, for two months wages from the day of

to *C.D.*, able seaman $ &c., &c.;

[and the Plaintiffs claim to have an account taken thereof.]

(7.) *Necessaries, repairs, &c.:*

The Plaintiffs claim the sum of $, for necessaries supplied (*or* repairs done, &c., *as the case may be*) to the Ship "Mary" at the port of on the day of , and for costs [and the Plaintiffs claim to have an account taken thereof]

(8.) *Possession:*

(*a.*) The Plaintiff, as sole owner of the Ship "Mary," of the port of , claims possession of the said ship.

(*b.*) The Plaintiff, as owner of 48-64th shares of the Ship "Mary," of the port of , claims possession of the said Ship against *C.D.*, owner of 16-64th shares of the same Ship.

(9.) *Mortgage :*

The Plaintiff, under a mortgage dated the_____ day of_____, claims against the Ship "Mary," [*or* the proceeds of the Ship "Mary," *or as the case may be*], the sum of $_____, as the amount due to him for principal and interest, and for costs.

(10.) *Claims between Co-Owners :*

(*a.*) The Plaintiff, as part owner of the Ship "Mary," claims against *C D.*, part owner of the same Ship, the sum of $_____, as part of the earnings of the said Ship due to the Plaintiff, and for costs; and to have an account taken thereof.

(*b.*) The Plaintiff, as owner of 24-64th shares of the Ship "Mary," being dissatisfied with the management of the said Ship by his co-owners, claims that his co-owners shall give bail in the sum of $_____, the value of his said shares, for the safe return of the Ship to the Dominion of Canada [*or to the District, as the case may be*].

(11.) *Bottomry :*

The Plaintiff, as assignee of a bottomry bond, dated the _____day of_____, and granted by *C.D.*, as master of the Ship "Mary" of_____, to *A.B.* at the port of_____, claims the sum of $_____against the Ship "Mary" [her cargo and freight, *&c., or as the case may be*] as the amount due to him under the said bond, and for costs.

(12.) *Derelict :*

A.B., claims to have the Derelict Ship "Mary" [*or* cargo, *&c., or as the case may be*,] condemned as forfeited to Her Majesty in Her Office of Admiralty.

(13.) *Piracy :*

A.B., Commander of H.M.S. "Torch," claims to have the Chinese junk "Tecumseh" and her cargo condemned as forfeited to Her Majesty as having been captured from pirates.

(14.) *Slave Trade :*

A.B., Commander of H.M.S. "London" claims to have the vessel, name unknown [together with her cargo and 12 slaves] seized by him on the_____day of_____18__, condemned as forfeited to Her Majesty, on the ground that the said vessel was at the time of her seizure engaged in or fitted out for the Slave Trade, in violation of existing treaties between Great Britain and Zanzibar (*or* of the Act 5 Geo. IV. c. 113, *or as the case may be*).

or

C.D., the owner of the_____vessel_____[and cargo, *or as the case may be*] captured by H. M. S. "London" on the _____day of_____18__, claims to have the said vessel [and cargo, *or as the case may be*] restored to him [together with costs and damages for the seizure thereof].

(15.) *Under Pacific Islanders Protection Acts:*

A.B., as Commander of H.M.S. "Lynx," claims to have the British Ship "Mary" and her cargo condemned as forfeited to Her Majesty, for violation of the Pacific Islanders Protection Acts, 1872 and 1875.

(16.) *Under Foreign Enlistment Act:*

A.B. claims to have the British Ship "Mary," together with the arms and munitions of war on board thereof, condemned as forfeited to Her Majesty for violation of the Foreign Enlistment Act, 1870.

(17.) *Under Customs Acts:*

A.B. claims to have the Ship "Mary" [*or as the case may be*] condemned as forfeited to Her Majesty for violation of [*state Act under which forfeiture is claimed*].

(18.) *Recovery of pecuniary forfeiture or penalty:*

A.B. claims judgment against the Defendant for penalties for violation of [*state Act under which penalties are claimed*].

No. 11.

AFFIDAVIT OF SERVICE OF A WRIT OF SUMMONS. Rule 18.

[*Title of court and action.*]

County of_____ }

I, *A.B.*, of _____in the County of _____ [*calling or occupation*] make oath and say:

1. That I did on the _____ day of _____ 18 serve the writ of summons herein by [*here state the mode in which the service was effected, whether on the owner, or on the ship, cargo or freight, &c, as the case may be*] on _____the _____day of_____18____.

(Signed)

SWORN before me, &c. A. B.

A Commissioner, &c.

No. 12.

APPEARANCE. Rule 28.

(1.) *By Defendant in person.*

[*Title of court and action.*]

Take notice that I appear in this action.

Dated this _____day of_____18____.

(Signed) *C.D.*, Defendant.

5

My address is _____
My address for service is _____

(2.) *By Solicitor for Defendant.*

[*Title of Court and Action*]

Take notice that I appear for *C D.* of [*insert address of C.D.*] in this action.

Dated this _____ day of _____ 18 ____

(Signed) *X.Y.*,
Solicitor for *C.D.*

My place of business is _____
My address for service is _____

No. 13.

Rule 28. INDORSEMENT OF SET-OFF OR COUNTER-CLAIM.

The Defendant [*or, if he be one of several Defendants*, the Defendant *C.D.*] owner of the ship "Mary" [*or as the case may be*] claims from the Plaintiff [*or* claims to set-off against the Plaintiff's claim] the sum of _____ for [*state the nature of the set-off or counter-claim and the relief or remedy required as in Form No.* 10, *mutatis mutandis*] and for costs.

No. 14.

Rule 35. AFFIDAVIT TO LEAD WARRANT.

[*Title of court and action.*]

I, *A.B.* [*state name and address*] make oath and say that I have a claim against the Ship "Mary" for [*state nature of claim*].

And I further make oath and say that the said claim has not been satisfied, and that the aid of this court is required to enforce it.

On the _____ day of _____ 18 , the said *A.B.* was duly sworn to the truth of this affidavit at _____ } (Signed) *A.B.*

Before me,
E.F., &c.

or

Where the Action is in the name of the Crown.

I, *A.B.*, &c. [*state name and address of person suing in the name of the Crown*] make oath and say that I claim to have the Ship "Mary" and her cargo [*or* the vessel, name unknown, *or* the cargo *ex* the Ship "Mary," *&c., or as the case may be*] condemned to Her Majesty ;—

(*a.*) as having been fitted out for or engaged in the Slave Trade in violation of [*state Act or Treaty alleged to have been violated*] ;

or (*b.*) as having been captured from pirates ;

or (*c.*) as having been found derelict :

or (*d.*) for violation of [*state Act alleged to have been violated, or as the case may be*].

I further make oath and say that the aid of this court is required to enforce the said claim.

On the _____ day of _____ 18 , the said *A.B.* was duly sworn to the truth of this affidavit at _____ } (Signed) *A.B.*

Before me,
E.F., &c.

No. 15.

WARRANT.

(L.S.) Rule

[*Title of court and action.*]

VICTORIA, &c.

To the Marshal of the Admiralty District of
[or Sheriff of the County of _____ *or as the case may be*].

We hereby command you to arrest the ship _____ her cargo and freight, &c., *or as the case may be*], and to keep the same under safe arrest, until you shall receive further orders from Us.

Given at _____ in our said court, under the seal thereof, this _____ day of _____ 18 .

Warrant
Taken out by _____

(Signed) *E. F.*,
Registrar (*or District Registrar, as the case may be*).

No. 16.

CERTIFICATE OF SERVICE TO BE INDORSED ON THE WARRANT AFTER SERVICE THEREOF. Rule 44.

This warrant was served by [*state by whom and in what mode service was effected*] on _____ the _____ day of _____ 18 .

(Signed) *G. H.*,
Marshal of the Admiralty District of _____ [or, *Sheriff of the County of* _____, *or as the case may be*].

No. 17.

Rule 46. BAILBOND.

[*Title of court and action.*]

Know all men by these presents that we [*insert names, addresses, and descriptions of the sureties in full*] hereby jointly and severally submit ourselves to the jurisdiction of the said court, and consent that if the said [*insert name of party for whom bail is to be given, and state whether Plaintiff or Defendant,*] shall not pay what may be adjudged against him in the above named action, with costs [*or*, for costs, *if bail is to be given only for costs*], execution may issue against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding [*state sum in letters*] dollars.

This Bailbond was signed by the said_____ and_____ the sureties, the_____ day of _____18____, in the registry of the Exchequer Court of Canada [*or as the case may be*]. — *Signatures of sureties.*

Before me,

E. F.,

Registrar, *or* District Registrar, [*or* clerk in the registry, *or* Commissioner to take bail, *or as the case may be*].

No. 18.

Rule 46. COMMISSION TO TAKE BAIL.

[*Title of court and action.*]

[L.S.]

VICTORIA, &c.

To [*state name and description of Commissioner*], Greeting.

Whereas in the above-named action bail is required to be taken on behalf of [*state name of party for whom bail is to be given, and whether Plaintiff or Defendant*] in the sum of [*state sum in letters*] dollars, to answer judgment in the said action.

We, therefore, hereby authorize you to take such bail on behalf of the said_____ from two sufficient sureties, upon the bailbond hereto annexed, and to swear the said sureties to the truth of the annexed affidavits as to their sufficiency, in the form indorsed hereon.

And we command you, that upon the said bond and affidavits being duly executed and signed by the said sureties, you do transmit the same, attested by you, to the registry of our said court.

Given at_____in our said court, under the seal thereof, this_____day of_____18__.

(Signed) *E. F.*
Registrar *or* District Registrar.

Commission to take bail.
Taken out by_____

Form of Oath to be administered to each surety.

You swear that the contents of the affidavit, to which you have subscribed your name, are true.

So help you GOD.

No. 19.

AFFIDAVIT OF JUSTIFICATION.

Rule 47.

[*Title of court and action.*]

I [*state name, address, and description of surety*], one of the proposed sureties for [*state name, address, and description of person for whom bail is to be given*] make oath and say that I am worth more than the sum of [*state in letters the sum in which bail is to be given*] dollars, after the payment of all my debts.

On the_____day of_____
18__, the said_____
was duly sworn to the truth of this
affidavit at_____
Before me,
E. F., Registrar.
or District Registrar *or* Commissioner,
or as the case may be.]

Signature of surety.

No. 20.

NOTICE OF BAIL.

Rule 50.

[*Title of court and action.*]

Take notice that I tender the under-mentioned persons as bail on behalf of [*state name, address, and description of party for whom bail is to be given, and whether Plaintiff or Defendant*] in the sum of [*state sum in letters and figures*] to answer judgment in this action [*or* judgment and costs, *or* costs *only*, *or as the case may be*].

Names, addresses, and descriptions of

SURETIES.	REFEREES.
(1)_____	_____
(2)_____	_____

Dated this____ day of_____ 18___.

(Signed) *X. Y.*

No. 21.

Rule 51. NOTICE OF OBJECTION TO BAIL.

[*Title of court and action.*]

Take notice that I object to the bail proposed to be given by [*state name, address, and description of surety or sureties objected to*] in the above-named action.

Dated the____ day of_____ 18

(Signed) *A.B.*

No. 22.

Rule 57. RELEASE.

(L.S.) [*Title of court and action.*]

VICTORIA, &c.

To the Marshal of the Admiralty District of_____ (*or* the Sheriff of the County of_____, *or as the case may be.*) Greeting:

Whereas by our warrant issued in the above-named action on the_____ day of_____ 18__, we did command you to arrest [*state name and nature of property arrested*] and to keep the same under safe arrest until you should receive further orders from us. We do hereby command you to release the said [*state name and nature of property to be released*] from the said arrest upon payment being made to you of all fees due to and charges incurred by you in respect of the arrest and custody thereof.

Given at_____, in Our said court, under the seal thereof, this____ day of_____ 18__.

Release
Taken out by____

(Signed) *E.F.*,
Registrar [*or* District Registrar].

No. 23

PLEADINGS.

Rule 61.

(1.) *In an Action for damage by collision:*

a. (*The "Atlantic."*)

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued_____18__.

1. Shortly before 7 p.m. on the 31st January, 1878, the brig "Anthes," of 234 tons register, of which the Plaintiff, George De Garis, was then owner, whilst on a voyage from Cardiff to Granville, in France, laden with coals, and manned with a crew of nine hands, all told, was about fifteen miles S.E. ½ E. from the Lizard Light.

2. The wind at that time was about E.N.E., a moderate breeze, the weather was fine, but slightly hazy, and the tide was about slack water, and of little force. The "Anthes" was sailing under all plain sail, close hauled on the port tack, heading about S.E. and proceeding through the water at the rate of about five knots per hour. Her proper regulation side sailing lights were duly placed and exhibited and burning brightly, and a good look-out was being kept on board of her.

3. At that time those on board the "Anthes" observed the red light of a sailing vessel, which proved to be the "Atlantic," at the distance of about from one mile and a half to two miles from the "Anthes," and bearing about one point on her port bow. The "Anthes" was kept close hauled by the wind on the port tack. The "Atlantic" exhibited her green light and shut in her red light, and drew a little on to the starboard bow of the "Anthes," and she was then seen to be approaching and causing immediate danger of collision. The helm of the "Anthes" was thereupon put hard down, but the "Atlantic," although loudly hailed from the "Anthes," ran against and with her stem and starboard bow struck the starboard quarter of the "Anthes" abaft the main rigging, and did her so much damage that the "Anthes," soon afterwards sank, and was with her cargo wholly lost, and four of her hands were drowned.

4. There was no proper look-out kept on board the "Atlantic."

5. Those on board the "Atlantic" improperly neglected to take in due time proper measures for avoiding a collision with the "Anthes."

6. The helm of the "Atlantic" was ported at an improper time.

7. The said collision, and the damages and losses consequent thereon, were occasioned by the negligent and improper navigation of those on board the "Atlantic"

The Plaintiff claims—

1. A declaration that he is entitled to the damage proceeded for.
2. The condemnation of the Defendants [and their bail] in such damage and in costs.
3. To have an account taken of such damage with the assistance of merchants.
4. Such further or other relief as the nature of the case may require.

Dated the_____day of_____18 .

(Signed) *A.B.*, Plaintiff.

DEFENCE AND COUNTER-CLAIM.

[*Title of court and action.*]

1. The Defendants are the owners of the Swedish barque "Atlantic," of 988 tons register, carrying a crew of nineteen hands all told, and at the time of the circumstances hereinafter stated bound on a voyage to Cardiff.

2. A little before 6.30 p.m., of the 31st January, 1878, the "Atlantic" was about fifteen miles S.E. by S. of the Lizard. The wind was E.N.E. The weather was hazy. The "Atlantic," under foresail, fore and main topsails, main topgallant sail, and jib, was heading about W.S.W., making from five to six knots an hour with her regulation lights duly exhibited and burning, and a good look-out being kept on board her.

3. In these circumstances the red lights of two vessels were observed pretty close together, about half mile off, and from two to three points on the starboard bow. The helm of the "Atlantic" was put to port in order to pass on the port sides of these vessels. One, however, of the vessels, which was the "Anthes," altered her course, and exhibited her green light, and caused danger of collision. The helm of the "Atlantic" was then ordered to be steadied, but before this order could be completed was put a hard-a-port. The "Anthes" with her starboard side by the main rigging struck the stem of the "Atlantic" and shortly afterwards sank, her master and four of her crew being saved by the "Atlantic."

4. Save as herein-before admitted, the several statements in the statement of claim are denied.

5. The "Anthes" was not kept on her course as required by law.

6. The helm of the "Anthes" was improperly starboarded.

7. The collision was caused by one or both of the things stated in the fifth and sixth paragraphs hereof, or otherwise by the negligence of the Plaintiffs, or of those on board the "Anthes."

8. The collision was not caused or contributed to by the Defendants, or by any of those on board the "Atlantic."

And by way of Counter-claim, the Defendants say—

They have suffered great damage by reason of the collision.

And they claim as follows:—

1. Judgment against the Plaintiff [and his bail] for the damage occasioned to the Defendants by the collision, and for the costs of this action.
2. To have an account taken of such damage with the assistance of merchants.
3. Such further and other relief as the nature of the case may require.

Dated the _____ day of _____ 18 .

(Signed) *A. B. &c.*, Defendants.

REPLY.

[*Title of court and action.*]

The Plaintiff denies the several statements contained in the statement of defence and counter-claim, [*or* admits the several statements contained in paragraphs and of the statement of defence and counter-claim, but denies the other statements contained therein]

Dated the _____ day of _____ 18 .

(Signed) *A. B.*, Plaintiff.

b. (*The "Julia David"*)

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued _____ 18 .

1. At about 2 a.m. on the 4th day of September, 1876, the steamship "Sarpedon," of 1,556 tons register, and 225 horse power, of which the Plaintiffs were owners, whilst on a voyage from Shanghai, and other ports to London, with a cargo of tea and other goods, was about eighty miles south-west of Ushant.

2. The wind at such time was about south-west, the weather was a little hazy and occasionally slightly thick, and the "Sarpedon" was under steam and sail, steering north-east, and proceeding at the rate of about ten knots per hour. Her proper regulation masthead and side lights were duly exhibited and burning brightly, and a good look-out was being kept.

3. At such time the masthead and red lights of a steam vessel, which proved to be the above-named vessel "Julia David," were seen at the distance of about two miles from and ahead of the "Sarpedon," but a little on her port bow. The helm of the "Sarpedon" was ported and hard a-ported, but the "Julia David" opened her green light to the "Sarpedon," and although the engines of the "Sarpedon" were immediately stopped, and her steam whistle was blown, the "Julia David" with her stem struck the "Sarpedon" on her port side, abreast of her red light, and did her so much damage that her master and crew were compelled to abandon her, and she was lost with her cargo. The "Julia David" went away without rendering assistance to those on board the "Sarpedon," and without answering signals which were made by them for assistance.

4. Those on board the "Julia David" neglected to keep a proper look-out.

5. Those on board the "Julia David" neglected to duly port the helm of the "Julia David."

6. The helm of the "Julia David" was improperly starboarded.

7. The "Julia David" did not duly observe and comply with the provisions of Article 16 of the "Regulations for Preventing Collisions at Sea."

8. The said collision was occasioned by the improper and negligent navigation of the "Julia David."

The Plaintiffs claim—

1. A declaration that they are entitled to the damage proceeded for, and the condemnation of the said steamship "Julia David," and the Defendants therein, and in costs.
2. To have an account taken of such damage with the assistance of merchants.
3. Such further and other relief as the nature of the case may require.

Dated the day of 18___.

(Signed) *A.B. &c.*, Plaintiffs.

Defence and Counter-claim.

[*Title of court and action.*]

1. The Defendants are the owners of the Belgian screw steamship "Julia David," of about 1,274 tons register, and worked by engines of 140 horse power nominal, with a crew of 30 hands, which left Havre on the 2nd of September, 1876, with a general cargo, bound to Alicante and other ports in the Mediterranean.

2. About 2.45 a.m. of the 4th September, 1876, the "Julia David," in the course of her said voyage, was in the Bay of Biscay. The weather was thick with a drizzling rain, and banks of fog and a stiff breeze blowing from S.S.W., with a good deal of sea. The "Julia David," under steam alone, was steering S.S.W. ½ W. by bridge steering compass, or S.W. ½ W. magnetic, and was making about five knots an hour. Her regulation lights were duly exhibited and burning brightly, and a good look-out was being kept on board her.

3. In the circumstances aforesaid those on board the "Julia David" saw the green and masthead lights of a steamship, the "Sarpedon," about two miles off, and about two points on the starboard bow. The "Julia David" was kept on her course. But after a short time the "Sarpedon" opened her red light and caused danger of collision. The helm of the "Julia David" was thereupon put hard a-port, and her engines stopped and almost immediately reversed full speed, but, nevertheless, the "Sarpedon" came into collision with the "Julia David," striking with the port side her stem and port bow, and doing her considerable damage.

4. The vessels separated immediately. The engines of the "Julia David" were then stopped, and her pumps sounded. She was making much water, and it was found necessary to turn her head away from the wind and sea. As soon as it could be done without great danger, she was steamed in the direction in which those on board her believed the "Sarpedon" to be, but when day broke and no traces of the "Sarpedon" could be discovered, the search was given up, and the "Julia David," being in a very disabled state, made her way to a port of refuge.

5. Save as hereinbefore appears, the several statements contained in the statement of claim are denied.

6. A good look-out was not kept on board the "Sarpedon."

7. The helm of the "Sarpedon" was improperly ported.

8. Those on board the "Sarpedon" improperly neglected or omitted to keep her on her course.

9. Those on board the "Sarpedon" did not observe the provisions of Article 16 of the "Regulations for Preventing Collisions at Sea."

10. The collision was occasioned by some or all of the matters and things alleged in the 6th, 7th, 8th, and 9th paragraphs hereof, or otherwise by the default of the "Sarpedon," or those on board her.

11. No blame in respect of the collision is attributable to the "Julia David" or to any of those on board her.

And by way of counter-claim the Defendants say that the collision caused great damage to the "Julia David."

And they claim—

(1.) The condemnation of the Plaintiffs [and their bail] in the damage caused to the "Julia David" and in the costs of this action.

(2.) To have an account taken of such damage with the assistance of merchants.

(3.) Such further and other relief as the nature of the case may require.

Dated the_____day of_____18___.

(Signed) *C. D., &c.*, Defendants.

REPLY.

[*Title of court and action.*]

The Plaintiffs deny the several statements contained in the statement of defence and counter-claim [*or, as the case may be*].

Dated the_____day of 18___.

(Signed) *A. B., &c.*, Plaintiffs.

(2.) *In an Action for Salvage:*

a. (*The "Crosby."*)

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued____ 18___.

1. The "Asia" is an iron screw steamship of 902 tons net register tonnage, fitted with engines of 120 horse-power nominal, is of the value of $_____, and was at the time of the services hereinafter stated manned with a crew of twenty-three hands under the command of George Hook Bawn, her master.

2. At about 9 a.m. on the 29th of April, 1877, while the "Asia"—which was in ballast proceeding on a voyage to Nikolaev to load a cargo of grain—was between Odessa and Ochakov, those on board her saw a steam-ship ashore on a bank situated about ten miles to the westward of Ochakov. The "Asia" immediately steamed in the direction of the distressed vessel which made signals for assistance.

3. On nearing the distressed vessel, which proved to be the "Crosby," one of the "Asia's" boats was sent to the "Crosby," in charge of the second mate of the "Asia," and subsequently the master of the "Crosby" boarded the "Asia," and at the request of the master of the "Crosby" the master of the "Asia" agreed to endeavour to tow the "Crosby" afloat.

4. The "Crosby" at this time was fast aground, and was lying with her head about N.N.W.

5. The master of the "Asia" having ascertained from the master of the "Crosby" the direction in which the "Crosby" had got upon the bank, the "Asia" steamed up on the starboard side of the "Crosby" and was lashed to her.

6. The "Asia" then set on ahead and attempted to tow the "Crosby" afloat, and so continued towing without effect until the hawser which belonged to the "Asia" broke.

7. The masters of the two vessels being then both agreed in opinion that it would be necessary to lighten the "Crosby" before she could be got afloat, it was arranged that the cargo from the "Crosby" should be taken on board the "Asia."

8. The "Asia" was again secured alongside the "Crosby" and the hatches being taken off cargo was then discharged from the "Crosby" into the "Asia," and this operation was continued until about 6 p.m., by which time about 100 tons of such cargo had been so discharged.

9. When this had been done both vessels used their steam, and the "Asia" tried again to get the "Crosby" off, but without success. The "Asia" then towed with a hawser ahead of the "Crosby," and succeeded in getting her afloat, upon which the "Crosby" steamed to an anchorage and then brought up.

10. The "Asia" steamed after the "Crosby" and again hauled alongside of her and commenced putting the transhipped cargo again on board the "Crosby," and continued doing so until about 6 a.m. of the 30th of April, by which time the operation was completed, and the "Crosby" and her cargo being in safety the "Asia" proceeded on her voyage.

11. By the services of the Plaintiffs the "Crosby" and her cargo were rescued from a very dangerous and critical position, as in the event of bad weather coming on whilst she lay aground she would have been in very great danger of being lost with her cargo.

12. The "Asia" encountered some risk in being lashed alongside the "Crosby," and she ran risk of also getting aground and of losing her charter, the blockade of the port of Nikolaev being at the time imminent.

13. The value of the hawser of the "Asia" broken as herein stated was $.....

14. The "Crosby" is an iron screw steam-ship of 1,118 tons net (1,498 gross) register tonnage. As salved, the "Crosby" and her cargo and freight have been agreed for the purposes of this action at the value of $.....

The Plaintiffs claim—

1. Such an amount of salvage, regard being had to the said agreement, as the court may think fit to award.
2. The condemnation of the Defendants [and their bail] in the salvage and in costs.
3. Such further and other relief as the case may require.

Dated the_____day of_____18____

(Signed) *A.B., &c.*, Plaintiffs.

Defence.

[*Title of court and action.*]

1. The Defendants admit that the statement of facts contained in the statement of claim is substantially correct, except that the reshipment of the cargo on board the "Crosby" was completed by 4 a.m. on the 30th April.

2. The Defendants submit to the judgment of the court to award such a moderate amount of salvage to the Plaintiffs under the circumstances aforesaid as to the said court shall seem meet.

(Signed) *C.D., &c.*, Defendants.

Reply.

[*Title of court and action.*]

The Plaintiffs deny the statement contained in the 1st paragraph of the statement of defence that the shipment of the cargo was completed by 4 a.m. on the 30th April.

Dated the_____day of_____18____

(Signed) *A.B., &c.* Plaintiffs.

b. (*"The Newcastle."*)

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued_____18__.

1. The "Emu" is a steam tug belonging to the Whitby Steam Boat Company, of six tons register, with engines of 40 horse-power, nominal, and was at the time of the circumstances hereinafter stated manned by a crew of five hands.

2. Just before midnight on the 22nd of July, 1876, when the "Emu" was lying in Whitby harbour, her master was informed that a screw steamship was ashore on Kettleness Point. He at once got up steam, but was not able, owing to the tide, to leave the harbour till about 1.45 a.m. of the 23rd.

3. About 2 a.m. the "Emu" reached the screw steam-ship, which was the "Newcastle," which was fast upon the rocks, with a kedge and warp out. The wind was about N., blowing fresh; the sea was smooth, but rising; the tide was flood.

4. The master of the "Emu" offered his services, which were at first declined by the master of the "Newcastle"; shortly afterwards the kedge warp broke and the "Newcastle" swung square upon the land and more upon the rocks. The master of the "Newcastle" then asked the master of the "Emu" to tow him off, and after some conversation it was agreed that the remuneration should be settled on shore.

5. About 3 a.m. those on board the "Emu" got a rope from the "Newcastle" on board, and began to tow. After some towing this rope broke. The tow-line of the "Newcastle" was then got on board the "Emu," and the "Emu" kept towing and twisting the "Newcastle," but was unable to get her off till about 5 a.m., when it was near high water. The master of the "Emu" then saw that it was necessary to try a click or jerk in order to get the "Newcastle" off, and accordingly, at the risk of straining his vessel, he gave a strong click in a northerly direction, and got the "Newcastle" off.

6. The master of the "Emu" then asked if the "Newcastle" was making water, and was told a little only, but as he saw that the hands were at the pumps he kept the "Emu" by the "Newcastle" until she was abreast of Whitby. He then inquired again if any assistance was wanted, and being told that the "Newcastle" was all right, and should proceed on her voyage, he steamed the "Emu" back into Whitby harbour about 7 a.m.

7. About 8 a.m. a gale from N.E. which continued all that day and the next, came on to blow with a high sea. If the "Newcastle" had not been got off before the gale came on she would have gone to pieces on the rocks.

8. By the services aforesaid the "Newcastle" and her cargo and the lives of those on board her were saved from total loss.

9. The "Newcastle" is a screw steamship of 211 tons register, and was bound from Newcastle to Hull with a general cargo and 19 passengers. The value of the "Newcastle" her cargo and freight, including passage money, are as follows:—

The "Newcastle," $\$$____, her cargo, $\$$____; freight and passage money, $\$$_____; in all, $\$$____.

Plaintiffs claim—

(1.) The condemnation of the Defendants [and their bail] in such an amount of salvage remuneration as to the court may seem just, and in the costs of this action.

(2.) Such further and other relief as the nature of the case may require.

Dated _____ day of _____ 18____

(Signed) *A.B., &c.*, Plaintiffs.

Defence.

[*Title of court and action.*]

1. At about 6.45 p.m. on the 22nd of July, 1876, the iron screw steam-ship "Newcastle," of 211 tons register, propelled by engines of 45 horse-power, and manned by 12 hands, her master included, whilst proceeding on a voyage from Newcastle to Hull with cargo and passengers, ran aground off Kettleness Point, on the coast of Yorkshire.

2. The tide at this time was the first quarter ebb, the weather was calm, and the sea was smooth, and the "Newcastle," after grounding as aforesaid, sat upright and lay quite still, heading about E.S.E. Efforts were then made to get the "Newcastle" again afloat by working her engines, but it was found that this could not be done in the then state of the tide.

3. At about 10 p.m. of the said day a hedge, with a warp attached to it, was carried out from the "Newcastle" by one of her own boats and dropped to seaward, and such warp was afterwards hove taut and secured on board the "Newcastle" with the view of its being hove upon when the flood tide made. Several cobles came to the "Newcastle" from Runswick, and the men in them offered their assistance, but their services, not being required, were declined.

4 At about 2 a.m. of the following morning the steam tug "Emu," whose owners, master, and crew are the Plaintiffs in this action, came to the "Newcastle" and offered assistance, which was also declined.

5. The flood tide was then making, and by about 2.45 a.m. the "Newcastle" had floated forward, and attempts were made to get the stern of the "Newcastle" also afloat, and the warp attached to the aforesaid kedge was attempted to be hove in, but the said warp having parted, the master of the "Newcastle" endeavoured ineffectually to make an agreement with the master of "Emu" to assist in getting the "Newcastle" afloat, and at about 3 a.m. a rope was given to the "Emu" from the port bow of the "Newcastle," and directions were given to the "Emu" to keep the head of the "Newcastle" to the eastward in the same way as it had been kept by the aforesaid kedge anchor and warp. The "Emu" then set ahead and almost immediately the said rope was broken. A coir hawser was thereupon given to the "Emu," and those on board her were directed not to put any strain on it, but to keep the "Emu" paddling ahead sufficiently to steady the head of the "Newcastle," and to keep her head to the eastward. This the "Emu" did and continued to do until about 4.40 a.m., when the "Newcastle," by means of her own engines, was moved off from the ground, and the "Emu" was brought broad on the port bow of the "Newcastle," and the "Emu" had to stop towing and to shift the rope from her port bollard, where it was fast to her towing hook; but the "Newcastle" continuing to go ahead, the said rope had to be let go on board the "Emu," and it was then hauled in on board the "Newcastle." The "Newcastle" under her own steam, then commenced proceeding south, the wind at the time being N.N.W. and light, and the weather fine. It was afterwards ascertained that the "Newcastle" was making a little water in her afterhold, and her hand pumps were then worked, and they kept the "Newcastle" free.

6. The "Emu" proceeded back with the "Newcastle" as far as Whitby, and the "Newcastle" then continued on her voyage and arrived in the Humber at about 2.45 p.m. of the same day.

7. During the time aforesaid the master, crew, and passengers of the "Newcastle" remained on board the "Newcastle," and no danger was incurred in their so doing.

8. Save as herein appears the Defendants deny the truth of the several statements contained in the statement of claim.

9. The Defendants have paid into Court and tendered to the Plaintiffs for their services the sum of $, and have offered to pay their costs, and the Defendants submit that such tender is sufficient.

Dated the day of 18 .

(Signed) *C.D. &c.*, Defendants.

(3.) *In an action for distribution of salvage:*

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued_____ 18 .

1. *Describe briefly the salvage services, stating the part taken in them by the Plaintiffs, and the capacity in which they were serving.*

2. The sum of $___ has been paid by the owners of the ship, &c [*state name of ship or other property salved*] to the Defendants, as owners of the ship [*state name of salving ship*], and has been accepted by them in satisfaction of their claim for salvage, but the said Defendants have not paid and refuse to pay any part of that sum to the Plaintiffs for their share in the said salvage services.

The Plaintiffs claim --

1. An equitable share of the said sum of $, to be apportioned among them as the court shall think fit and the costs of this action.
2. Such other relief as the nature of the case may require.

Dated the__ day of_____ 18 .

(Signed) *A.B., &c.*, Plaintiffs.

(4.) *In an Action for master's wages and disbursements:*

a. ("*The Princess.*")

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued_____18____.

1. The Plaintiff, on the 10th day of February, 1877, was appointed by the owner of the British barque "Princess," proceeded against in this action, master of the said barque, and it was agreed between the Plaintiff and the said owner that the wages of the Plaintiff as master should be $____ per month.

2. The Plaintiff acted as master of the said barque from the said 10th day of February until the 25th day of October, 1877, and there is now due to him for his wages as master during that time the sum of $_____

3. The Plaintiff as master of the said barque expended various sums of money for necessary disbursements on account of the said barque; and there is now due to him in respect of the same a balance of $_____

The Plaintiff claims—

1. A decree pronouncing the said sums, amounting in the whole to $_____, to be due to him for wages and disbursements, and directing the said vessel to be sold and the amount due to him to be paid to him out of the proceeds.
2. Such further and other relief as the nature of the case may require.

Dated the _____ day of _____ 18___.

(Signed) *A.B.*, Plaintiff.

b. ("*The Northumbria.*")

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued _____ 18___

1. In or about the month of July, 1873, the Plaintiff was engaged by the owners of the British ship "Northumbria" to serve on board her as her master, at wages after the rate of $_____ per month, and he entered into the service of the said ship as her master accordingly, and thenceforward served on board her in that capacity and at that rate of wages until he was discharged as hereinafter stated.

2. When the Plaintiff so entered into the service of the said ship she was lying at the port of North Shields in the county of Northumberland, and she thence sailed to Point de Galle, and thence to divers other ports abroad, and returned home to Cardiff, where she arrived on the 1st day of October, 1875.

3. The "Northumbria," after having received divers repairs at Cardiff, left that port on the 5th day of November, 1875, under the command of the Plaintiff on a voyage, which is thus described in the ship's articles signed by the Plaintiff and her crew before commencing the same; viz.: "A voyage from Cardiff to Bahia or Pernambuco, and "any ports or places in the Brazils, or North or South "America, United States of America, Indian, Pacific, or "Atlantic Oceans, China or Eastern Seas, Cape Colonies, "West Indies, or Continent of Europe, including the "Mediterranean Sea or Seas adjacent, to and fro if re-"quired for any period not exceeding three years, but "finally to a port of discharge in the United Kingdom or "Continent of Europe."

4. The "Northumbria," after so leaving Cardiff, met with bad weather and suffered damage, and was compelled to put back to Falmouth for repairs before again proceeding on her voyage.

5. The Plaintiff was ready and willing to continue in the service of the "Northumbria," and to perform his duty as her master on and during the said voyage, but the Defendants, the owners of the "Northumbria," wrongfully and without reasonable cause discharged the Plaintiff on the 23rd day of November from his employment as master, and appointed another person as master of the "Northumbria" on the said voyage in the place of the Plaintiff, and thereby heavy damage and loss have been sustained by the Plaintiff.

6. The Plaintiff, whilst he acted as master of the "Northumbria," earned his wages at the rate aforesaid; and he also, as such master, made divers disbursements on account of the "Northumbria"; and there was due and owing to the Plaintiff in respect of such his wages and disbursements, at the time of his discharge, a balance of $, which sum the Defendants without sufficient cause have neglected and refused to pay to the Plaintiff.

The Plaintiff claims—

1. Payment of the sum of $, the balance due to the Plaintiff for his wages and disbursements, with interest thereon.

2. Ten days double pay, according to the provisions of section 187 of "The Merchant Shipping Act, 1854."

3. Damages in respect of his wrongful discharge by the Defendants.

4. The condemnation of the Defendants [and their bail] in the amounts claimed by or found due to the Plaintiff.

5. To have an account taken [with the assistance of merchants] of the amount due to the Plaintiff in respect of his said wages and disbursements, and for damages in respect of such wrongful discharge.

6. Such further and other relief as the nature of the case may require.

Dated the day of , 18 .

(Signed) *A.B.*, Plaintiff.

Defence.

[*Title of court and action.*]

1. The Defendants admit the statements made in the 1st, 2nd, 3rd and 4th paragraphs of the Plaintiff's statement of claim.

2. Whilst the "Northumbria" was upon her voyage in the said 3rd paragraph mentioned, and before and until she put into Falmouth, as in the said 4th paragraph mentioned, the Plaintiff was frequently under the influence of drink.

3. During the night of the 10th November, 1875, and the morning of the 11th November, 1875, whilst a violent gale was blowing and the ship was in danger, the Plaintiff was wholly drunk and was incapable of attending to his duty as master of the said ship; and in consequence of the condition of the Plaintiff much damage was done to the said ship, and the said ship was almost put ashore.

4. The damage in the 4th paragraph of the statement of claim mentioned was wholly or in part occasioned by the drunken condition of the Plaintiff during the said voyage from Cardiff to Falmouth.

5. The Defendants having received information of the above facts on the arrival of the said ship at Falmouth, and having made due inquiries concerning the same, had reasonable and probable cause to and did discharge the Plaintiff from their employment as master of the said ship on the 23rd November, 1875.

6. The Plaintiff, on the 12th day of November, 1875, whilst the said ship was at Falmouth, wrongfully and improperly tore out and destroyed certain entries which had been made by the mate of the said ship in her log-book relating to said sea voyage from Cardiff to Falmouth; and the Plaintiff substituted in the said log-book entries made by himself with intent to conceal the true facts of said voyage from the Defendants.

7. The Defendants bring into court the sum of $ in respect of the Plaintiff's claim for wages and disbursements, and say that the said sum is enough to satisfy the Plaintiff's said claim in that behalf. The Defendants offered to pay the plaintiff's costs to this time in respect of those two causes of action.

Dated the _____ day of _____ 18____.

(Signed) *C.D., E.F., &c.*, Defendants.

Reply.

[*Title of court and action.*]

The Plaintiff denies the several statements contained in the statement of defence [*or as the case may be*].

Dated the _____ day of _____ 18____.

(Signed) *A.B.*, Plaintiff.

(5.) *In an Action for Seamen's wages:*

STATEMENT OF CLAIM.

[*Title of Court and Action.*]

Writ issued 18 .

1. The Plaintiff, *A.B.*, was engaged as mate of the British brig "Bristol," at the rate of $ per month, and in pursuance of that engagement served as mate on board the said brig from the day of 18 , to the day of 18 , and during that time as mate of the said brig earned wages amounting to $. After giving credit for the sum received by him on account, as shown in the schedule hereto, there remains due to him for his wages a balance of $.

2. The Plaintiffs *C. D.*, *E. F.* and *G. H.* were engaged as able seamen on board the said brig, and having in pursuance of that engagement served as able seamen on board the said brig during the periods specified in the schedule hereto, earned thereby as wages the sums set forth in the same schedule, and after giving credit for the sums received by them respectively, on account of the said wages, there remain due to them the following sums, namely:—

To *C.D.* the sum of $.
To *E.F.* " $.
To *G.H.* " $.

3. The Plaintiffs *I K.* and *L.M.* were engaged as ordinary seamen on board the said brig, and having served on board the same in pursuance of the said engagement during the periods specified in the schedule hereto, earned thereby the sums set forth in the same schedule, and after giving credit for the sums received by them respectively, on account of the said wages, there remain due to them the following sums, namely:—

To *I.K.* the sum of $.
To *L.M.* " $.

SCHEDULE referred to above.

Wages due to *A.B.*, mate, from the 18 , to the 18 , months and days at $ per month.

$: :

Less received on account – $: :

Balance due – $: :

Wages due to *C.D*, able seaman, from the _____ 18 __, to the _____ 18 __, __ months and ___ days, at $_____ per month.

		$ ___ : ___ : ___
Less received on account	–	$ ___ : ___ : ___
Balance due	–	$ ___ : ___ : ___

[*So on with the wages due to the other Plaintiffs*].

The Plaintiffs claim—

1. The several sums so due to them respectively with the costs of this action.
2. Such double pay as they may be entitled to under sec. 187, of "*The Merchant Shipping Act*, 1854."
3. Such other relief as the nature of the case may require.

Dated the _____ day of _____ 18 __.

(Signed) *A.B., &c.*, Plaintiffs.

(6.) *In an Action for bottomry:*

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued _____ 18 __.

1. In the month of July, 1876, the Italian barque "Roma Capitale" was lying in the port of Rangoon in the Pegu Division of British Burmah, and Pietro Ozilia, her master, being in want of funds, was compelled to borrow on bottomry of the said barque and her freight from the Cassa Marittima di Genova the sum of $ _____ for the necessary and indispensable repairs, charges, and supplies of the said vessel in the said port of Rangoon, and to enable her to prosecute her voyage from Rangoon to Akyab and thence to _____.

2. Accordingly, by a bond of bottomry dated the 11th day of the said month of July and duly executed by him, the said Pietro Ozilia, in consideration of the sum of $ _____ lent by the said Cassa Marittima di Genova upon the said adventure upon the said barque and freight at the maritime premium of 23 per cent, bound himself and the said barque and the freight to become payable in respect of

the said voyage to pay to the said Cassa Marittima di Genova, their successors or assigns, the sum $_____ (which included the principal charges and the maritime interest due thereon), within 30 days after the said barque should arrive at her port of discharge; and the said bond provided that the said Cassa Marittima di Genova should take upon themselves the maritime risk of the said voyage.

3. The "Roma Capitale" has since successfully prosecuted her said intended voyage for which the aforesaid bond was granted, and arrived at _____ as her port of discharge on or about the 30th day of March, 1877.

4. Before the issue of the writ in this action the said bond became due and payable, and was duly endorsed by the said Cassa Marittima di Genova to the Plaintiffs who thereby became and are the legal holders thereof, and the said sum of $ is now due and owing thereon to the Plaintiffs.

The Plaintiffs claim—

1. A declaration for the force and validity of the said bond.
2. The condemnation of the said barque "Roma Capitale" and her freight in the sum of $_____ with interest thereon at per cent per annum from the time when the said bond became payable, and in costs.
3. A sale of the said barque and the application of the proceeds of her sale and of her freight in payment to the Plaintiffs of the said amount and interest and costs.
4. Such further and other relief as the case may require.

Dated the_____day of _____18___.

(Signed) *A. B., &c.*, Plaintiffs.

(7.) *In an Action for mortgage :*

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued _____18_____.

1. The above-named brigantine or vessel "Juniper" is a British ship belonging to the port of _____, of the registered tonnage of 109 tons or thereabouts, and at the time of the mortgage hereinafter mentioned, Thomas Brock, of _____was the registered owner of the said brigantine.

2. On the 4th day of July, 1876, $\frac{32}{64}$th parts or shares of the said brigantine were mortgaged by the said Thomas Brock to the Plaintiff, to secure the payment by the said Thomas Brock to the Plaintiff of the sum of $_____, together with interest thereon at the rate of — per cent per annum on or before the 1st day of July, 1877.

3. The said mortgage of the "Juniper" was made by an instrument dated the 4th day of July, 1876, in the form prescribed by the 66th section of "*The Merchant Shipping Act*, 1854," and was duly registered in accordance with the provisions of the said Act.

4. No part of the said principal sum or interest has been paid, and there still remains due and owing to the Plaintiff on the said mortgage security the principal sum of $_____, together with a large sum of money for interest and expenses, and the Plaintiff, although he has applied to the said Thomas Brock for payment thereof, cannot obtain payment without the assistance of this Court.

The Plaintiff claims—

1. Judgment for the said principal sum of $_____, together with interest and expenses.
2. To have an account taken of the amount due to the Plaintiff.
3. Payment out of the proceeds of the said brigantine now remaining in court, of the amount found due to the Plaintiff, together with costs [*or* to have the said brigantine sold, *&c., as the case may be.*]
4. Such further and other relief as the nature of the case may require.

Dated the _____ day of _____ 18__.

(Signed) *A. B.*, Plaintiff.

(8.) *In an Action between co-owners (for account):*

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued _____ 18____.

1. The "Horlock" is a sailing ship of about 40 tons register, trading between _____ and _____.

2. By a bill of sale duly registered on the 11th day of June, 1867, the Defendant, John Horlock, who was then sole owner of the above named ship "Horlock," transferred to Thomas Worraker, of _____, $\frac{32}{64}$th parts or shares of the ships for the sum of $_____.

3. By a subsequent bill of sale duly registered on the 16th December, 1876, the said Thomas Worraker transferred his said $\frac{32}{64}$th shares of the ship to George Wright, the Plaintiff, for the sum of $_____.

4. The Defendant, John Horlock, has had the entire management and the command of the said ship from the 11th day of June, 1867, down to the present time.

5. The Defendant has from time to time up to and including the 24th September, 1874, rendered accounts of the earnings of the ship to the aforementioned Thomas Worraker, but since the said 24th of September, 1874, the Defendant has rendered no accounts of the earnings of the ship.

6. Since the 16th December, 1876, the ship has continued to trade between _____ and _____, and the Plaintiff has made several applications to the Defendant, John Horlock, for an account of the earnings of the ship, but such applications have proved ineffectual.

7. The Plaintiff is dissatisfied with the management of the ship, and consequently desires that she may be sold.

The Plaintiff claims —

1. That the court may direct the sale of the said ship "Horlock."
2. To have an account taken of the earnings of the said ship, and that the Defendant may be condemned in the amount which shall be found due to the Plaintiff in respect thereof, and in the costs of this action.
3. Such further or other relief as the nature of the case may require.

Dated the _____ day of _____ 18__.

(Signed) *A. B.*, Plaintiff.

DEFENCE.

[*Title of court and action.*]

1. The defendant denies the statements contained in paragraph 2 of the statement of claim.

2. The Defendant further says that he never at any time signed any bill of sale transferring any shares whatever of the said ship "Horlock" to the said Thomas Worraker, and further says that if any such bill was registered as alleged on the 11th June in the said 2nd paragraph (which the Defendant denies) the same was made and registered fraudulently and without the knowledge, consent, or authority of the Defendant.

3. The Defendant does not admit the statements contained in the 3rd paragraph of the statement of claim, and says that if the said Thomas Worraker transferred any shares of the said ship to the Plaintiff as alleged (which the Defendant does not admit), he did so wrongfully and unlawfully, and that he had not possession of or any right to or in respect of said shares.

4. The Defendant denies the statements contained in paragraph 5 of the statement of claim, and says that he never rendered any such accounts as alleged therein.

5. The Defendant does not admit the statements contained in paragraph 6 of the statement of claim.

Dated the _____ day of _____ 18 .

(Signed) *C.D.*, Defendant.

REPLY.

[*Title of court and action*]

The Plaintiff denies the several statements in the statement of defence.

Dated the _____ day of _____ 18 .

(Signed) *A.B.*, Plaintiff.

(9.) *In an Action for Possession.*

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued _____ 18 .

1. The Plaintiffs are registered owners of $\frac{44}{64}$ shares in the British ship "Native Pearl," and such shares are held by them respectively as follows:—

Morgan Parsall Griffiths is owner of $\frac{16}{64}$ shares, Edmund Nicholls of $\frac{8}{64}$ shares, William Meagher of $\frac{4}{64}$ shares, Isaac Butler of $\frac{8}{64}$ shares, and William Herbert of $\frac{8}{64}$ shares.

2. The only owner of the said ship other than the Plaintiffs is John Nicholas Richardson, who is the registered owner of the remaining $\frac{20}{64}$ shares of the said ship, and has hitherto acted as managing owner and ship's husband of the said ship, and has possession of and control over the said ship and her certificate of registry.

3. The Defendant, the said John Nicholas Richardson, has not managed the said ship to the satisfaction of the Plaintiffs, and has by his management of her occasioned great loss to the Plaintiffs; and the Plaintiffs in consequence thereof before the commencement of this action gave notice to the Defendant to cease acting as managing owner and ship's husband of the said ship, and revoked his authority in that behalf, and demanded from the Defendant the possession and control of the said ship and of her certificate of registry, but the Defendant has refused and still refuses to give possession of the said ship and certificate to the Plaintiffs, and the Plaintiffs cannot obtain possession of them without the assistance of this court.

4. The Defendant has neglected and refused to render proper accounts relating to the management and earnings of the said ship, and such accounts are still outstanding, and unsettled between the Plaintiffs and the Defendant.

The Plaintiffs claim—

1. Judgment giving possession to the Plaintiffs of the said ship and of her certificate of registry.
2. To have an account taken, with the assistance of merchants, of the earnings of the ship.
3. A sale of the Defendant's shares in the said ship.
4. Payment out of the proceeds of such sale of the balance (if any) found due to the Plaintiffs and of the costs of this action.
5. Such further and other relief as the nature of the case may require.

Dated the___ day of _____18

(Signed) *A.B.*, &c., Plaintiffs.

(10.) *In an Action for Necessaries:*

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued_____18 .

1. The Plaintiffs at the time of the occurrences hereinafter mentioned carried on business at the port of _____as bonded store and provision merchants and ship chandlers.

2. The "Sfactoria" is a Greek ship, and in the months of June, July, August and September, 1874, was lying in the said port of _____under the command of one George Lazzaro, a foreigner, her master and owner, and in the said month of September she proceeded on her voyage to_____

3. The Plaintiffs, at the request and by the direction of the said master, supplied during the said months of June, July, August and September, 1874, stores and other necessaries for the necessary use of the said ship upon the said then intended voyage to the value of $, for which sum an acceptance was given by the said George Lazzaro to the Plaintiffs; but on the 4th day of February, 1875, the said acceptance, which then became due, was dishonoured, and the said sum of $ with interest thereon from the said 4th day of February, 1875, still remains due and unpaid to the Plaintiffs.

4. In the month of August aforesaid the Plaintiffs, at the request of the said master, advanced to him the sum of $ for the necessary disbursements of the said ship at the said port of , and otherwise on account of the said ship; and also at his request paid the sum of $, which was due for goods supplied for the necessary use of the said ship on the said voyage; and of the sums so advanced and paid there still remains due and unpaid to the Plaintiffs the sum of $ with interest thereon from the 5th day of January, 1875, on which last mentioned day a promissory note given by the said George Lazzaro to the said Plaintiffs for the said sum of $ was returned to them dishonoured.

5. The Plaintiffs also at the said master's request, between the 1st of September, 1874, and the commencement of this action paid various sums amounting to $ for the insurance of their said debt.

6. The said goods were supplied and the said sums advanced and paid by the Plaintiffs upon the credit of the said ship, and not merely on the personal credit of the said master.

The Plaintiffs claim—

1. Judgment for the said sums of $ and $ together with interest thereon.
2. That the Defendant [and his bail] be condemned therein, and in costs.

or

2 A sale of the said ship, and payment of the said sums and interest out of the proceeds of such sale, together with costs.

3. Such further and other relief as the case may require.

Dated the day of 18 .

(Signed) *A. B., &c.*, Plaintiffs.

(11.) *In an Action for condemnation of a ship or cargo, &c.:*

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued_____18__.

State briefly the circumstances of the seizure, or, if an Affidavit of the circumstances has been filed, refer to the Affidavit.

A.B. [*state name of person suing in the name of the Crown*] claims—

The condemnation of the said ship_____[and her cargo, and of the said slaves, *or as the case may be*], on the ground that the said ship, &c., was at the time of the seizure thereof fitted out for or engaged in the Slave Trade [*or* as having been captured from pirates, *or* for violation of the Act _____ S. ____ *or as the case may be*].

Dated the_____ day of_____ 18__.

(Signed) *A.B.*

(12.) *In an Action for Restitution of a Ship or Cargo:*

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued_____18__.

State briefly the circumstances of the seizure.

C.D. [*State name of person claiming restitution*] claims—

The restitution of the said vessel_____[and her cargo, *or as the case may be*] together with costs and damages for the seizure thereof [*or as the case may be*]

Dated the ____ day of ____ 18__.

(Signed) *C. D. &c.*, Plaintiffs.

(13.) *In a Piracy case, where the captors intend to apply for Bounty, add—*

A. B. further prays the Court to declare—

(1.) That the persons attacked or engaged were pirates.

(2.) That the total number of pirates so engaged or attacked was _____ of whom _____ were captured.

(3.) That the vessel [*or* vessels and boats] engaged was [*or* were] _____ [and _____].

Dated the _____ day of _____ 18 .

(Signed) *A. B.*

(14.) *In an Action for recovery of any pecuniary forfeiture or penalty:*

STATEMENT OF CLAIM.

[*Title of court and action.*]

Writ issued _____ 18 .

State briefly the circumstances, and the Act and section of Act, under which the penalty is claimed.

I, *A. B.*, claim to have the Defendant condemned in a penalty of $ _____, and in the costs of this action.

Dated the _____ day of _____ 18 .

(Signed) *A. B*

No. 24.

INTERROGATORIES. Rule 69.

[*Title of court and action.*]

Interrogatories on behalf of the Plaintiff *A. B.* [*or* Defendant *C. D.*] for the examination of the Defendants *C. D.* and *E. F.* [*or* Plaintiff *A. B.*, *or as the case may be*].

1. Did not, &c.

2. Have not, &c.

The Defendant *C. D.* is required to answer the interrogatories numbered .

The Defendant *E. F.* is required to answer the interrogatories numbered .

Dated the _____ day of _____ 18 .

(Signed) *A.B.* [*or C.D., as the case may be.*]

No. 25.

Rule 69.

ANSWERS TO INTERROGATORIES.

[*Title of court and action.*]

The answers of the Defendant *C.D.* [*or* Plaintiff *A.B.*, *&c.*] to the interrogatories filed for his examination by the Plaintiff *A. B.* [*or* Defendant *C. D.*, *&c.*]

In answer to the said interrogatories I, the above-named *C.D.* [*or A. B.*, *&c.*], make oath and say as follows:—

1. _____.

2. _____.

&c. &c. &c.

On the _____ day of _____ 18__, the said *C.D.* [*or A.B.*, *&c.*] was duly sworn to the truth of this affidavit at _____.

Before me,

E. F., *&c.*

(Signed) *C.D.* [*or A.B.*]

No. 26.

Rule 71.

AFFIDAVIT OF DISCOVERY.

[*Title of court and action.*]

I, the Defendant *C. D.* [*or* Plaintiff *A. B.*, *&c.*], make oath and say as follows:

1. I have in my possession or power the documents relating to the matters in question in this action, set forth in the first and second parts of the first schedule hereto.

2. I object to produce the documents set forth in the second part of the said first schedule on the ground that [*state grounds of objection, and verify the facts as far as may be*].

3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this action as set forth in the second schedule hereto.

4. The last mentioned documents were last in my possession or power on [*state when*].

5. [*Here state what has become of the last mentioned documents, and in whose possession they now are.*]

6. According to the best of my knowledge, information, and belief, I have not now and never had in my possession, custody, or power, or in the possession, custody or power of my solicitor or agent, or of any other person or persons on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this action, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

SCHEDULE No. 1.

Part 1.

[*Here set out documents.*]

Part 2.

[*Set out documents.*]

SCHEDULE No. II.

[*Set out documents.*]

On the_____day of _____ 18__ said *C.D.* [*or A.B. &c.*] was duly sworn to the truth of this affidavit at_____ Before me, *E.F., &c.* } (Signed) *C.D.* [*or A.B.*]

No. 27.

NOTICE TO PRODUCE.

Rule 72.

[*Title of court and action.*]

Take notice that the Plaintiff *A.B.* [*or* Defendant *C.D.*] requires you to produce for his inspection, on or before the _____day of_____, the following documents.

Here describe the documents required to be produced.]

Dated_____day of _____ 18____.

(Signed) *A.B.*, Plaintiff,
[*or C.D.*, Defendant.]

To *C.D.*, Defendant,
[*or as the case may be.*]

No. 28.

Rule 74.

Notice to Admit Documents.

[*Title of court and action.*]

Take notice that the Plaintiff, *A. B.* [*or* Defendant *C. D.*] in this action proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the Defendant [*or* Plaintiff], his solicitor or agent, at _____ on _____, between the hours of _____ and _____; and the Defendant [*or* Plaintiff] is hereby required, within *forty-eight hours* from the last mentioned hour, to admit that such of the said documents as are specified as originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and that such documents as are stated to have been served, sent, or delivered, were so served, sent or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this action.

Description of Documents.	Dates.	Time and mode of service or delivery, &c.
[*Here briefly describe documents.*] (1.) *Originals.* (2.) *Copies.*	[*Here state the date of each document.*]	[*Here state whether the original or a duplicate was sent by post, or served or delivered, and when and by whom.*]

Dated the _____ day of _____ 18 ___.

(Signed) *A. B.*, Plaintiff [*or C. D.*, Defendant.]

To *C. D.*, Defendant,
[*or as the case may be.*]

No. 29.

Rule 74.

Notice to Admit Facts.

[*Title of court and action.*]

Take notice that the Plaintiff *A. B.* [*or* Defendant *C. D.*] demands admission of the under mentioned facts, saving all just exceptions.

1. } [*Here state briefly the facts of which admission is*
2. } *demanded.*]

Dated the ___ day of 18 .

(Signed) *A. B.*, Plaintiff [*or C. D.*, Defendant.]

To *C. D.*, Defendant,
[*or as the case may be*].

No. 30.

NOTICE OF MOTION.

Rule 81.

[*Title of court and action.*]

Take notice that on [*state day of week*] the ___ day of ___, the Plaintiff [*or* Defendant] will [by counsel, *or* by his solicitor, *if the motion is to be made by counsel or solicitor*] move the judge in court [*or* in chambers, *as the case may be*] to order that [*state nature of order to be moved for. In a notice of motion to vary a report of the registrar, the items objected to must be specified*].

Dated the ___ day of ___ 18 .

(Signed) *A. B.*, Plaintiff [*or C. D.*, Defendant.]

No. 31.

NOTICE OF TENDER.

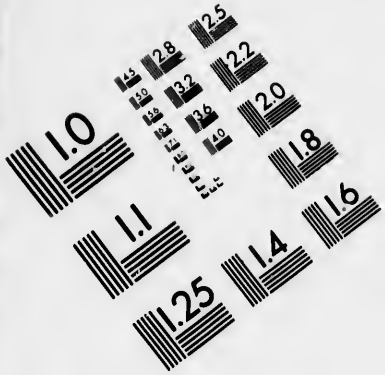
Rule 86.

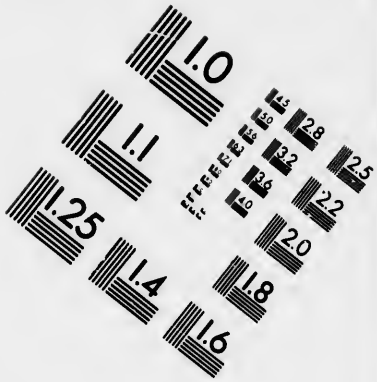
[*Title of court and action.*]

Take notice that I have paid into court, and tender in satisfaction of the Plaintiff's claim [*or, as the case may be*] *if the tender is for costs also, add* including costs,] the sum of [*state sum tendered both in letters and figures, and on what terms, if any, the tender is made*].

Dated the ___ day of ___ 18___.

(Signed) *C. D.*, Defendant.





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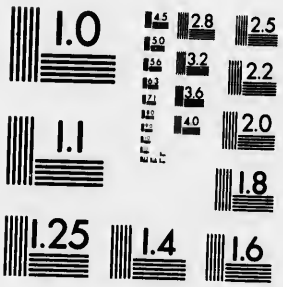

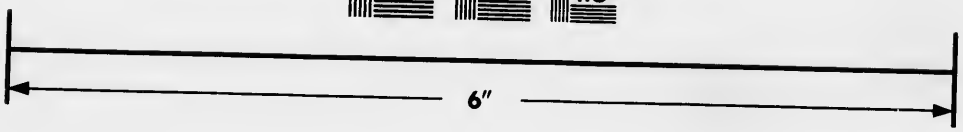

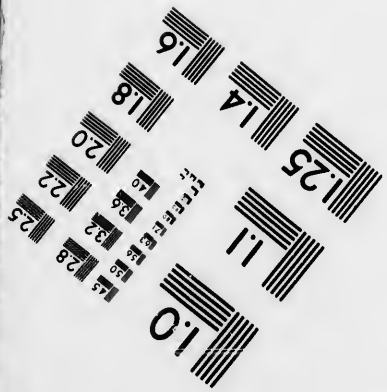

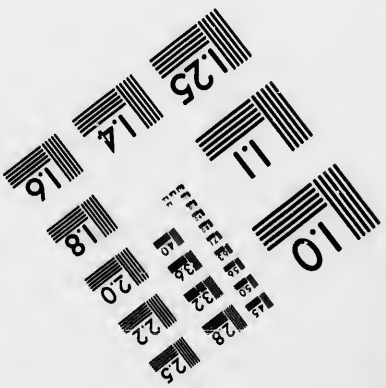

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(716) 872-4503

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No. 32.

Rule 86. NOTICE ACCEPTING OR REJECTING TENDER.

[*Title of court and action.*]

Take notice that I accept [*or* reject] the tender made by the Defendant in this action.

Dated the _____ day of _____ 18___.

(Signed) *A. B.*, Plaintiff

No. 33.

INTERPRETER'S OATH.

Rule 92.

You swear that you are well acquainted with the English and _____ languages [*or as the case may be*] and that you will faithfully interpret between the Court and the witnesses.

So help you GOD

No. 34.

Rule 93. APPOINTMENT TO ADMINISTER OATHS.

(1.) *In Admiralty Proceedings generally:*

(L.S.)

[*Title of court.*]

To [*State name and address of Commissioner*].

I hereby appoint you to be a Commissioner to administer oaths in all Admiralty proceedings in this Court.

(Signed) *A.B.*,
Judge, or *Local Judge in Admiralty.*

(2.) *In any particular Proceeding.*

(L.S.)

[*Title of court and action.*]

To [*State name and address of Appointee*].

I hereby authorize you to administer an oath [*or* oaths *as the case may be*] to [*state name of person or persons to whom, and proceeding in which the oath is to be administered, or as the case may be*].

(Signed) *A.B.*,
Judge, or *Local Judge in Admiralty.*

No. 35.

FORM OF OATH TO BE ADMINISTERED TO A WITNESS. Rule 94.

You swear that the evidence given by you shall be the truth, the whole truth, and nothing but the truth.

So help you GOD.

FORM OF DECLARATION IN LIEU OF OATH.

I solemnly promise and declare that the evidence given by me shall be the truth, the whole truth, and nothing but the truth.

No. 36.

FORM OF OATH TO BE ADMINISTERED TO A DEPONENT. Rule 94.

You swear that this is your name and handwriting, and that the contents of this affidavit are true.

So help you GOD.

FORM OF DECLARATION IN LIEU OF OATH TO BE MADE BY A DEPONENT.

I solemnly declare that this is my name and handwriting, and that the contents of this deposition are true.

No. 37.

FORM OF JURAT. Rule 99.

[*Where Deponent is sworn by Interpretation.*]

On the____ day of 18__, the said *A.B.* was duly sworn to the truth of this affidavit by the interpretation of *C.D.*, who was previously sworn, that he was well acquainted with the English and _____ languages, [*or as the case may be*] and that he would faithfully interpret the said affidavit, at _____.

Before me,
E.F., &c.

(Signed) *A.B*

No. 38.

Rule 102. ORDER FOR EXAMINATION OF WITNESSES.

[*Title of court and action.*]

On the _____ day of _____ 18 .

Before _____ Judge, &c.

It is ordered that [*state the names of the witnesses so far as it can be done*], witnesses for the Plaintiff [*or* Defendant], shall be examined before the judge [*or* registrar], at [*state place of examination*], on [*state day of week*], the _____ day of _____ instant [*or as the case may be*], at _____ o'clock in the _____ noon.

(Signed) *E.F.*,
Registrar, *or* District Registrar.

No. 39.

Rule 104. COMMISSION TO EXAMINE WITNESSES.

(L.S.) [*Title of court and action.*]

VICTORIA, &c.

To [*state name and address of commissioner.*] Greeting:

Whereas the Judge of our Exchequer Court of Canada, [*or the Local Judge in Admiralty of the Exchequer Court for the Admiralty District of* _____] has decreed that a commission shall be issued for the examination of witnesses in the above named action. We, therefore, hereby authorize you, upon the _____ day of _____ 18___, at _____, in the presence of the parties, their counsel, and solicitors, or, in the absence of any of them, to swear the witnesses who shall be produced before you for examination in the said action, and cause them to be examined, and their evidence to be reduced into writing. We further authorize you to adjourn, if necessary, the said examination from time to time, and from place to place, as you may find expedient. And we command you, upon the examination being completed, to transmit the evidence duly certified, together with this commission, to the registry of our said court at _____.

Given at _____ in our said court, under the seal thereof, this _____ day of _____ 18 .

(Signed) *E.F.*,
Registrar, *or* District Registrar.

Commission to examine witnesses.

Taken out by

No. 40.

RETURN TO COMMISSION TO EXAMINE WITNESSES. Rule 167.

[*Title of court and action.*]

I, *A. B.*, the commissioner named in the commission hereto annexed, bearing date the_____day of_____ 18__, hereby certify as follows:—

(1.) On the_____day of_____18 I opened the said commission at_____, and in the presence of [*state who were present, whether both parties, their counsel, or solicitors, or as the case may be*], administered an oath to and caused to be examined the under named witnesses who were produced before me on behalf of the [*state whether Plaintiff or Defendant*] to give evidence in the above named action, viz.:—

[*Here state names of witnesses.*]

(2.) On the_____day of_____18__ I proceeded with the examinations at the same place [*or, at some other place, as the case may be,*] and in the presence of [*state who were present, as above,*] administered an oath to and caused to be examined the under-named witnesses who were produced before me on behalf of [*state whether Plaintiff or Defendant*] to give evidence in the said action, viz.:

[*State names of witnesses.*]

(3.) Annexed hereto is the evidence of all the said witnesses certified by me to be correct.

Dated the_____day of_____18 .

(Signed) *G. H.*,
Commissioner.

No. 41.

SHORTHAND WRITER'S OATH. Rule 109.

You swear that you will faithfully report the evidence of the witnesses to be produced in this action.

So help you GOD.

No. 42.

Rule 114.

NOTICE OF TRIAL.

[*Title of court and action.*]

Take notice that I set down this action for trial.

Dated the_____day of_____18____.

(Signed) *A.B.*, Plaintiff,
[*or C.D.*, Defendant.]

No. 43.

Rule 127.

REGISTRAR'S REPORT.

(L.S.) [*Title of court and action.*]

To the Honourable the Judge of the Exchequer Court of Canada [*or* To the Honourable the Local Judge in Admiralty of the Exchequer Court for the Admiralty District of_____.

Whereas by your decree of the_____ 18____, you were pleased to pronounce in favour of the Plaintiff [*or* Defendant], and to condemn the Defendant [*or* Plaintiff] and the ship_____[*or as the case may be*] in the amount to be found due to the Plaintiff [*or* Defendant] [and in costs], and you were further pleased to order that an account should be taken, and to refer the same to the registrar [assisted by merchants] to report the amount due:

Now, I do report that I have [with the assistance of *here state names and description of assessors, if any,*] carefully examined the accounts and vouchers and the proofs brought in by the Plaintiff [*or* Defendant] in support of his claim [*or* counter-claim], and having on the_____ day of _____heard the evidence of [*state names*] who were examined as witnesses on behalf of the Plaintiff and of [*state names*] who were examined as witnesses on behalf of the Defendant, [and having heard the solicitors (*or* counsel) on both sides, *or as the case may be*], I find that there is due to the Plaintiff [*or* Defendant] the sum of $_____ [*state sum in letters and figures*] together with interest thereon as stated in the schedule hereto annexed. I am also of opinion that the Plaintiff [*or* Defendant] is entitled to the costs of this reference [*or as the case may be*].

Dated_____18____

(Signed) *E.F.*,
Registrar [*or* District Registrar.]

SCHEDULE annexed to the foregoing report.

No.		Claimed.		Allowed.	
		$	Cts.	$	Cts.
1	[*Here state as briefly as possible the several items of the claim with the amount claimed and allowed on each item in the columns for figures opposite the item.*]				
2					
3					
4					
5					
&c.					
	Total – – –				

With interest thereon from the _____ day of _____ 18____, at the rate of _____ per cent. per annum until paid.

(Signed) *E.F.*,
Registrar [*or District Registrar.*]

No. 44.

COMMISSION OF APPRAISEMENT.

Rule 149.

[L.S.] [*Title of court and action.*]

VICTORIA, &C.

To the Marshal of our Admiralty District of _____, [*or* the Sheriff of the County of _____, *or as the case may be,*] Greeting:

Whereas the judge of our said court [*or* the Local Judge in Admiralty of our said court for the Admiralty District of _____] has ordered that [*state whether ship or cargo and state name of ship and, if part only of cargo, state what part*] shall be appraised.

We, therefore, hereby command you to reduce into writing an inventory of the said [ship *or cargo, &c., as the case may be*], and having chosen one or more experienced person or persons, to swear him or them to appraise the same according to the true value thereof, and upon a certificate of such value having been reduced into writing, and signed by yourself and by the appraiser or appraisers, to file the same in the registry of our said court, together with this commission.

Given at _____, in our said court, under the seal thereof, this_____day of_____18 .

(Signed) *E.F.*,
Registrar [*or* District Registrar.]

Commission of Appraisement.

Taken out by_____

No. 45.

Rule 149.

COMMISSION OF SALE.

[*Title of court and action.*]

(L.S.)

VICTORIA, &C.

To the Marshal of our Admiralty District of_____,

[*or* the Sheriff, *&c., as in Form No.* 44.] Greeting:

Whereas the judge of our said court [*or* the Local Judge, &c., *as in Form No.* 44] has ordered that [*state whether ship or cargo and state name of ship, and if part only of cargo, what part*] shall be sold. We, therefore, hereby command you to reduce into writing an inventory of the said [ship *or* cargo, &c., *as the case may be*], and to cause the said [ship *or* cargo, &c.] to be sold by public auction for the highest price that can be obtained for the same.

And we further command you, as soon as the sale has been completed, to pay the proceeds arising therefrom into our said court, and to file an account sale signed by you, together with this commission.

Given at_____, in our said court, under the seal thereof, this_____day of_____18___.

(Signed) *E.F.*,
Registrar [*or* District Registrar.]

Commission of sale.

Take out by_____

No. 46.

COMMISSION OF APPRAISEMENT AND SALE.

(L.S.) Rule 149.

[*Title of court and action.*]

VICTORIA, &c.

To the Marshal of our Admiralty District of___
[*or* the Sheriff, *&c., as in Form No.* 44.] Greeting:

Whereas the judge of our said court [*or* the Local Judge, *&c., as in Form No.* 44] has ordered that [*state whether ship or cargo, and state name of ship, and if part only of cargo, what part*] shall be sold. We, therefore, hereby command you to reduce into writing an inventory of the said [ship *or* cargo, *&c., as the case may be*], and having chosen one or more experienced person or persons to swear him or them to appraise the same according to the true value thereof, and when a certificate of such value has been reduced into writing and signed by yourself and by the appraiser or appraisers, to cause the said [ship *or* cargo, &c., *as the case may be*] to be sold by public auction for the highest price, not under the appraised value thereof, that can be obtained for the same.

And we further command you, as soon as the sale has been completed, to pay the proceeds arising therefrom into our said court, and to file the said certificate of appraisement and an account sale signed by you, together with this commission.

Given at _____, in our said court, under the seal thereof, this _____ day of _____ 18 .

(Signed) *E. F.*,
Registrar [*or* District Registrar].

Commission of appraisement and sale.

Taken out by _____

No. 47.

COMMISSION OF REMOVAL.

(L.S.) Rule 149

[*Title of action.*]

VICTORIA, &c.

To the Marshal of our Admiralty District of_____
[*or* the Sheriff, *&c.*, as in Form No. 44.] Greeting:

Whereas the judge of our said court [*or* the Local Judge, &c., *as in Form No.* 44] has ordered that the [*state name and description of ship*] shall be removed

from_____to_____ on a policy of insurance in the sum of $_____ being deposited in the registry of our said court; and whereas a policy of insurance for the said sum has been so deposited. We, therefore, hereby command you to cause the said ship to be removed accordingly. And we further command you, as soon as the removal has been completed, to file a certificate thereof, signed by you, in the said registry, together with this commission.

Given at_____, in our said court, under the seal thereof, this ____ day of_____ 18___

(Signed) *E.F.*,
Registrar [*or* District Registrar]

Commission of removal.

Taken out by_____

No. 48.

Rule 149. COMMISSION FOR DISCHARGE OF CARGO

(L.S.) [*Title of court and action.*]

VICTORIA, &c.

To the Marshal of our Admiralty District of _____
[*or* the Sheriff, *&c., as in Form No.* 44.] Greeting:

Whereas the judge of our said court [*or* the Local Judge, &c., *as in Form No.* 44] has ordered that the cargo of the ship_____ shall be discharged. We, therefore, hereby command you to discharge the said cargo from on board the said ship, and to put the same into some fit and proper place of deposit. And we further command you, as soon as the discharge of the said cargo has been completed, to file your certificate thereof in the registry of our said court, together with this commission.

Given at_____ in our said court, under the seal hereof, this ____ day of_____ 18 .

(Signed) *E. F.*,
Registrar [*or* District Registrar].

Commission for discharge of cargo.

Taken out by_____

No. 49.

COMMISSION FOR DEMOLITION AND SALE. Rule 149

(In a Slave Trade case.)

(L.S.) [*Title of court and action.*]

VICTORIA, &c.

To the Marshal of our Admiralty District of
[*or* the Sheriff, *&c., as in Form No.* 44.] Greeting:

We hereby command you, in pursuance of a decree of the judge of our said court [*or* the Local Judge, &c., *as in Form No.* 44] to that effect, to cause the tonnage of the vessel _____ to be ascertained by Rule No. 1 of the 21st section of *The Merchant Shipping Act*, 1854, [*or by such rule as shall, for the time being be in force for the admeasurement of British vessels*], and further to cause the said vessel to be broken up, and the materials thereof to be publicly sold in separate parts (together with her cargo, *if any*) for the highest price that can be obtained for the same.

And we further command you, as soon as the sale has been completed, to pay the proceeds arising therefrom into our said court, and to file an account sale signed by you, and a certificate signed by you of the admeasurement and tonnage of the vessel, together with this commission.

Given at _____, in the said court, under the seal thereof, this _____ day of _____ 18 .

(Signed) *E.F.*,
Registrar [*or* District Registrar.]

Commission for demolition and sale.
Taken out by _____.

No. 50.

ORDER FOR INSPECTION. Rule 154

[*Title of court and action.*]

On the _____ day of _____ 18 .

Before _____ Judge, &c.

The judge, on the application of [*state whether Plaintiff or Defendant*] ordered that the ship _____ should be inspected by [*state whether by the marshal or by the assessors of the court, or as the case may be,*] and that a report in writing of the inspection should be lodged by him [*or* them in the registry.

(Signed) *E.F.*,
Registrar [*or* District Registrar.]

No. 51.

Rule 153. NOTICE OF DISCONTINUANCE.

[*Title of court and action.*]

Take notice that this action is discontinued.

Dated the_____day of_____18___.

(Signed) *A.B.*, Plaintiff.

No. 52.

Rule 155. NOTICE TO ENTER JUDGMENT FOR COSTS.

[*Title of court and action.*]

Take notice that I apply to have judgment entered for my costs in this action.

Dated the_____day of_____18___.

(Signed) *C.D.*, Defendant.

No. 53.

Rule 159. NOTICE OF MOTION ON APPEAL.

In the Exchequer Court of Canada.
In Admiralty.
Between *A.B.*, Plaintiff;
and
C.D., Defendant.

Take notice that this Honourable Court will be moved on_____the_____day of_____18___, or so soon thereafter as counsel can be heard, on behalf of the above named Plaintiff *A.B.* [*or Defendant C.D.*], that the judgment [*or order*] of the Local Judge in Admiralty for the Admiralty District of_____made herein and dated the _____day of_____18___, [*or if only part of the judgment or order is appealed from say* that so much of the judgment (*or order*) of the Local Judge in Admiralty for the Admiralty District of_____ made herein and dated the_____

day of _____ 18 , as adjudges (*or directs or orders as the case may be*) that _____ [*here set out the part or parts of the judgment or order which are appealed from*] may be reversed [*or rescinded*] and that—[*here set out the relief or remedy, if any, sought*] and that the costs of this appeal, and before the Local Judge in Admiralty, may be paid by the_____ to the_____.

Dated, &c.

Yours, &c.,
X. Y.,
Solicitor, &c., *or*, Agent, &c.

(To the above named Defendant), (or Plaintiff), and to , his solicitor or agent.

No. 54.

RECEIVABLE ORDER.

Rule 177.

Registry of the Exchequer Court of Canada
[*or*, for the Admiralty District of _____]

No. _____.

_____

— _____18 __

[*Title of court and action.*]

Sir,—

I have to request that you will receive from [*state name of person paying in the money*] the sum of _____dollars on account in the above named action, and place the same to the credit of the account of the Registrar of the Exchequer Court of Canada [*or*, for the Admiralty District of _____].

(Signed) *E.F.*,
Registrar, [*or* District Registrar].

To the Manager of [*state name or style of bank to which the payment is to be made,*] *or*,
To the Deputy of the Minister of Finance and Receiver-General of Canada.

No. 55.

Rule 179. ORDER FOR PAYMENT OUT OF COURT.

[*Title of court and action.*]

I, _____, Judge of the Exchequer Court of Canada [*or, as the case may be*], hereby order payment of the sum of [*state sum in letters and figures*], being the amount [*state whether found due for damages or costs, or tendered in the action or, as the case may be*] to be made to [*state name and address of party or solicitor to whom the money is to be paid*] out of the [proceeds of sale of ship, *&c., or as the case may be*] now remaining in court.

Dated the _____ day of _____ 18 .

Witness, (Signed) *J.K.*,
E.F., Judge,
Registrar, [*or as the case may be.*]
[*or District Registrar*].

No. 56.

Rule 180. NOTICE FOR CAVEAT WARRANT.

[*Title of court, or title of court and action.*]

Take notice that I, *A.B.*, of _____ apply for a caveat against the issue of any warrant for the arrest of [*state name and nature of property*], and I undertake, within *three days* after being required to do so, to give bail to any action or counter-claim that may have been or may be brought against the same in this court in a sum not exceeding [*state sum in letters*] dollars, or to pay such sum into court.

My address for service is _____.

Dated the _____ day of _____ 18 .

(Signed) *A.B.*

No. 57.

Rule 180. CAVEAT WARRANT.

[*Title of court, or title of court and action.*]

[*State Name of Ship, &c.*]

Caveat entered this _____ day of _____ 18 , against the issue of any warrant for the arrest of [*state name and nature of property*] without notice being first given to

[*state name and address of person to whom, and address at which, notice is to be given*], who has undertaken to give bail to any action or counter-claim that may have been or may be brought in the said court against the said [*state name and nature of property*].

On withdrawal of caveat add:—

Caveat withdrawn the _____ day of _____ 18 .

No. 58.

NOTICE FOR CAVEAT RELEASE. Rule 181.

[*Title of court and action.*]

Take notice that I, *A.B.*, Plaintiff [*or* Defendant] in the above named action, apply for a caveat against the release of [*state name and nature of property.*]

[*If the person applying for the caveat is not a party to the action, he must also state his address and an address for service within three miles of the registry.*]

Dated the _____ day of _____ 18

(Signed) *A.B.*

No. 59

CAVEAT RELEASE. Rule 181

[*Title of court and action.*]

Caveat entered this _____ day of _____ 18___. against the issue of any release of [*state name and nature or property*] by [*state name and address of person entering caveat, and his address for service*].

On withdrawal of caveat, add:—

Caveat withdrawn this _____ day of _____ 18

No. 60.

NOTICE FOR CAVEAT PAYMENT. Rule 182.

[*Title of court and action.*]

Take notice that I, *A.B.*, Plaintiff [*or* Defendant] in the above named action, apply for a caveat against the pay-

ment of any money [*if for costs, add* for costs, *or as the case may be*] out of the proceeds of the sale of [*state whether ship or cargo, and name of ship, &c.*] now remaining in court, without notice being first given to me.

[*If the person applying for the caveat is not a party to the action, he must also state his address, and an address for service within three miles of the registry.*]

Dated the day of 18 .

(Signed) *A. B*

No. 61.

Rule 182. CAVEAT PAYMENT.

[*Title of court and action.*]

Caveat entered this day of 18 , against the payment of any money [*if for costs, add* for costs, *or as the case may be*] out of the proceeds of the sale of [*state whether ship or cargo, and if ship, state name of ship, &c.*] now remaining in court, without notice being first given to [*state name and address of person to whom, and address at which, notice is to be given*].

On withdrawal of the caveat, add:—

Caveat withdrawn this day of 18 .

No. 62

Rule 187. NOTICE FOR WITHDRAWAL OF CAVEAT.

[*Title of court and action.*]

Take notice that I withdraw the caveat [*state whether caveat warrant, release, or payment*] entered by me in this action [*or as the case may be*].

Dated the day of 18 .

(Signed) *A. B.*

No. 63.

SUBPŒNA.

Rule 189.

(L.S.) [*Title of court and action.*]

VICTORIA, &c.

To _____. Greeting.

We command you _____ that, all other things set aside, you appear in person before the judge [*or* the registrar, *or G.H.*, a commissioner appointed by an order of our said court] at _____ on _____ the _____ day of _____ 18 , at o'clock in the _____ noon of the same day, and so from day to day as may be required, and give evidence in the above named action.

And herein fail not at your peril.

Given at _____, in our said court, under the seal thereof, this day of 18 .

Subpœna.

Taken out by _____

No. 64.

SUBPŒNA DUCES TECUM.

Rule 189

The same as the preceding form, adding before the words "And herein fail not at your peril," *the words* "and that "you bring with you for production before the said judge "[*or* registrar *or* commissioner, *as the case may be*] the following documents, viz.,

[*Here state the documents required to be produced.*]

No. 65.

ORDER FOR PAYMENT.

Rule 192.

[L.S.] [*Title of court and action*]

On the day of 18 .

Before _____

Judge, &c., [*or* Local Judge of the Admiralty District of _____].

It is ordered that *A B.* [Plaintiff *or* Defendant, *&c.*,] do pay to C.D. [Defendant *or* Plaintiff, &c.,] within

_____ *days* from the date hereof the sum of $ _____ [*state sum in letters and figures*] being the amount [*or* balance of the amount] found due from the said *A.B.* to the said *C.D.* for [*state whether for damages, salvage, or costs, or as the case may be*] in the above-named action.

(Signed) *E.F.*,
Registrar [*or* District Registrar.]

No. 66.

Rule 193. ATTACHMENT.

[L.S.] [*Title of court and action.*]

VICTORIA, &c.

To the Marshal of our Admiralty District of _____ [*or* the Sheriff, *&c., as in Form No.* 44.] Greeting:

Whereas the Judge of our said Court [*or* the Local Judge in Admiralty, &c., *as in Form No.* 44] has ordered [*state name and description of person to be attached*] to be attached for [*state briefly the ground of attachment.*]

We, therefore, hereby command you to attach the said _____, and to bring him before our said judge.

Given at _____, in our said court, under the seal thereof, this ____ day of _____ 18__.

(Signed) *E.F.*,
Registrar [*or* District Registrar.]

Attachment.
Taken out by _____

No. 67.

Rule 194. ORDER FOR COMMITTAL.

(L.S.) [*Title of court and action.*]

On the ____ day of _____ 18__.

Before _____
Judge, &c.
[*or* Local Judge in Admiralty for the Admiralty District of _____]

Whereas *A.B.* [*state name and description of person to be committed*] has committed a contempt of court in that [*state in what the contempt consists*] and, having been this day brought before the judge on attachment, persists in his said

contempt, it is now ordered, that he be committed to prison for the term of from the date hereof, or until he shall clear himself from his said contempt.

(Signed) *E.F.*,
Registrar, [*or* District Registrar.]

No. 68.

COMMITTAL.

Rule 194.

[*Title of court.*]

To

Receive into your custody the body [*or* bodies] of herewith sent to you, for the cause hereinunder written; that is to say,

For [*state briefly the ground of attachment*].

Dated the day of 18 .

(Signed) *J.K.*,
Judge, &c.
[*or* Local Judge in Admiralty for the Admiralty District of .]

Witness,
E.F.,
Registrar,
[*or* District Registrar.]

No. 69.

MINUTE ON FILING ANY DOCUMENT.

Rule 202,

[*Title of court and action.*]

I, *A.B*, [*state whether Plaintiff or Defendant*], file the following documents, viz.:

[*Here describe the documents filed.*]

Dated the day of 18 .

(Signed) *A.B.*

No. 70.

Rule 213.

MINUTE OF ORDER OF COURT.

[*Title of court and action.*]

On the____ ____day of____ ____18____.

Before_____

Judge, &c.

[*or* Local Judge in Admiralty for the Admiralty District of _____]

The judge, on the application of [*state whether Plaintiff or Defendant*] ordered [*state purport of order*].

No. 71.

Rule 213.

MINUTE ON EXAMINATION OF WITNESSES.

[*Title of court and action.*]

On the____ ____day of ____ ____18____.

Before

Judge, &c.

[*or* Local Judge, &c., *as the case may be*].

A.B. [*state whether Plaintiff or Defendant*] produced as witnesses

[*Here state names of witnesses in full.*]

who, having been sworn [*or as the case may be*], were examined orally [*if by interpretation, add* by interpretation of_____].

No. 72.

Rule 213.

MINUTE OF DECREE.

[*Title of court and action.*]

On the____ ____day of ____ 18____.

Before_____,

Judge, &c.

[*or* Local Judge, &c., *as the case may be.*]

(1.) *Decree for an ascertained sum :*

The judge having heard [*state whether Plaintiff and Defendant, or their counsel or solicitors, or as the case may be,*]

and having been assisted by [*state names and descriptions of assessors, if any,*] pronounced the sum of [*state sum in letters and figures*] to be due to the Plaintiff [*or* Defendant], in respect of his claim [*or* counter-claim], together with costs [*if the decree is for costs*]. And he condemned—

(a.) ***in an Action in rem where Bail has not been given:***
the ship_____ [*or* cargo *ex* the ship _____, or proceeds of the ship _____, *or* of the cargo *ex* the ship _____ *or as the case may be*] in the said sum [and in costs].

(b.) ***in an Action in personam, or in rem where Bail has been given:***
the Defendant [*or* Plaintiff] and his bail [*if bail has been given*] in the said sum [and in costs].

(2.) *Decree for a sum not ascertained:*

The judge having heard, &c., [*as above*] pronounced in favour of the Plaintiff's claim [*or* Defendant's counter-claim] and condemned the ship _____ [or cargo, &c., *or* the Defendant *or* Plaintiff] and his bail [*if bail has been given*] in the amount to be found due to the Plaintiff [*or* Defendant] [and in costs]. And he ordered that an account should be taken, and

(a.) *If the amount is to be assessed by the judge,*
that all accounts and vouchers, with the proofs in support thereof, should be filed within _____ *days* [*or as the case may be*].

(b.) *If the Judge refers the assessment to the registrar,*
referred the same to the registrar [assisted by merchants], to report the amount due, and ordered that all accounts, &c., [*as above*].

(3.) *Decree on dismissal of action:*

The judge having heard, &c., [*as above*] dismissed the action [*if with costs, add*] and condemned the Plaintiff and his bail [*if bail has been given*] in costs.

(4.) *Decree for condemnation of a derelict subject to salvage:*

The judge, having heard, &c., [*as above*] pronounced the sum of [*state sum in letters and figures*] to be due to *A.B., &c.*, for salvage, together with costs, and subject thereto condemned the said ship _____, [*or* cargo *or* proceeds of ship *or* of cargo, &c., *as the case may be*] as a droit and perquisite of Her Majesty in her office of Admiralty.

(5.) *Decree in action for possession :*

The judge having heard, &c., decreed that possession of the ship _____ should be given to the Plaintiff, and condemned the Defendant [and his bail] in costs.

(6.) *Decree of condemnation in a slave trade action :*

The judge having heard, &c. [*as above*], pronounced that the vessel, name unknown [*or as the case may be*], seized by H.M.S. "Torch" on the _____ day of _____ 18___, had been at the time of her seizure engaged in or fitted out for the slave trade in contravention of the Treaties existing between Great Britain and _____ [*or* in violation of the Acts 5 Geo. IV. c. 113, and 36 & 37 Vict. c. 88, *or as the case may be*], and he condemned the said vessel [together with the slaves, goods, and effects on board thereof] as forfeited to Her Majesty [*or* condemned the said vessel and slaves as forfeited, &c., but ordered that the cargo should be restored to the claimant, *or, as the case may be*].

The judge further ordered that the said slaves [*or* the slaves then surviving], consisting of _____ men, _____ women, and _____ boys and _____ girls, should be delivered over to [*state to whom, or how the slaves are to be disposed of*].

If the vessel has been brought into port, add :—

The judge further ordered that the tonnage of the vessel should be ascertained by the rule in force for the admeasurement of British vessels, and that the vessel should be broken up, and that the materials thereof should be publicly sold in separate parts, together with her cargo [*if any*];

or

If the vessel has been abandoned or destroyed by the seizors prior to the adjudication, and the court is satisfied that the abandonment or destruction was justifiable, add :—

The judge further declared that, after full consideration by the court of the circumstances of the case, the seizors had satisfied the court that the abandonment [*or* destruction] of the vessel was inevitable or otherwise under the circumstances proper and justifiable.

(7.) *Decree of restitution in a slave trade action :*

The judge having heard, &c., pronounced that it had not been proved that the vessel _____ was engaged in or

fitted out for the slave trade, and ordered that the said vessel should be restored to the claimant, together with the goods and effects on board thereof;

add, as the case may be,

but without costs or damages,

or

on payment by the said claimant of the costs incurred by the seizors in this action;

or

and awarded to the said claimant costs and damages in respect of the detention of the said vessel, and [referred the same to the registrar (assisted by merchants) to report the amount thereof, and] directed that all accounts and vouchers with the proofs in support thereof, if any, should be filed within _____ *days.*

(8.) *Decree in case of rapture from pirates:*

The judge having heard, &c., pronounced that the said junk "Tecumseh" [and her cargo] had been at the time of the capture thereof by H.M.S. "Torch" the property of pirates, and condemned the same as a droit and perquisite of Her Majesty in Her office of Admiralty;

or

pronounced that the said junk "Tecumseh" [and her cargo] had prior to her re-capture by H.M.S. "Torch," &c., been captured by pirates from the claimant [*state name and description of former owner*], and he decreed that the same should be restored to the said claimant as the lawful owner thereof, on payment to the re-captors of *one-eighth* part of the true value thereof in lieu of salvage. The judge also directed that the said junk [and her cargo] should be appraised;

If the junk, &c., has been captured after an engagement with the pirates, and if there is a claim for bounty, add:—

The judge further declared that the persons attacked or engaged by H.M.S. "Torch," &c., on the occasion of the capture of the said junk were pirates, that the total number of pirates so attacked or engaged was about _____, that _____ of that number were captured, and that the only vessel engaged was H.M.S. "Torch" [*or, as the case may be*].

(9.) *Decree of condemnation under Pacific Islanders Protection Acts:*

The judge, having heard, &c., pronounced that the ship _____ had been at the time of her seizure [*or* during the voyage on which she was met] employed [*or* fitted out for employment] in violation of the Pacific Islanders Protection Acts, 1872 and 1875, and he condemned the said ship _____ [and her cargo, and all goods and effects found on board, *or as the case may be*,] as forfeited to Her Majesty.

The judge further ordered that the said ship _____ [and her cargo, and the said goods and effects] should be sold by public auction, and that the proceeds should be paid into court.

(10.) *Decree of condemnation under Foreign Enlistment Act:*

The judge, having heard, &c., pronounced that the ship _____ had been [built, equipped, commissioned, despatched, *or* used, *as the case may be*] in violation of the Foreign Enlistment Act, 1870, and he condemned the said ship _____ and her equipment [and the arms and munitions of war on board thereof, *or as the case may be*] as forfeited to Her Majesty.

(11.) *Decree of condemnation under Customs or Revenue Acts:*

The judge having heard, &c., condemned the ship _____ [*or* cargo *or* proceeds, &c., *as the case may be*] as forfeited to Her Majesty for violation to the Act [*state what Act*].

(12.) *Decree for pecuniary forfeiture or penalty under Customs Act or other Act:*

The judge having heard, &c., pronounced the said goods to have been landed [*or other illegal act to have been done*] in violation of the Act [*state what Act*] and condemned the Defendant *C.D.* [the owner of the said goods, *or as the case may be*] in the penalty of _____ imposed by the said Act [and in costs].

No. 73.

MINUTES IN AN ACTION FOR DAMAGE BY COLLISION. Rule 213.

A. B., &c.

No. _____ against

The Ship "Mary."

18	
Jan. 3	A writ of summons [and a warrant] was [*or* were] issued to X.Y. on behalf of A.B., &c., the owners of the ship "Jane" against the ship "Mary" [and freight, *or as the case may be*] in an action for damage by collision. Amount claimed $1,000.
" 5	Y. Z. filed notice of appearance on behalf of C. D., &c., the owners of the ship "Mary."
" 6	X. Y. filed writ of summons.
" "	The marshal filed warrant.
" 7	Y. Z. filed bailbond to answer judgment as against the Defendants [*or as the case may be*] in the sum of $1,000, with affidavit of service of notice of bail.
" "	A release of the ship "Mary" was issued to Y. Z.
" 8	X. Y. filed Preliminary Act [and notice of motion for pleadings].
" "	Y. Z. filed Preliminary Act.
" 10	The judge having heard solicitors on both sides [*or as the case may be*], ordered pleadings to be filed.
" 11	X.Y. filed statement of claim
" 14	Y.Z. filed defence [and counter-claim.]
" 15	X.Y. filed reply.
" 16	The judge having heard solicitors on both sides [*or as the case may be*] ordered both Plaintiffs and Defendants to file affidavits of discovery, and to produce, if required, for mutual inspection, the documents therein set forth within *three days*
" 18	X.Y. filed affidavit of discovery.
" 19	Y.Z. filed affidavit of discovery.
" 22	X.Y. filed notice of trial.
" 26	X.Y. produced as witnesses [*state names of witnesses*], who, having been sworn, were examined orally in court, the said [*state names*] having been sworn and examined by interpretation of [*state name of interpreter*] interpreter of the_____language. Present [*state names of assessors present, if any*] assessors.
	Y.Z. produced as witnesses, &c. [*as above*].

18__.	The judge having heard [*state whether Plaintiffs and Defendants, or their counsel or solicitors, as the case may be*], and having been assisted by [*state names and descriptions of assessors, if any*], pronounced in favour of the Plaintiffs [*or* Defendants] and condemned the Defendants [*or* Plaintiffs] and their bail [*if bail has been given*] in the amount to be found due to the Plaintiffs [*or* Defendants] [and in costs]. And he ordered that an account should be taken, and referred the same to the registrar [assisted by merchants] to report the amount due, and ordered that all accounts and vouchers, with the proofs in support thereof, should be filed within ____*days* [*or as the case may be*].
Feb. 5	X.Y. filed claim, with accounts and vouchers in support thereof [numbered 1 to ___], and affidavits of [*state names of deponents, if any.*]
" 8	Y.Z. filed accounts and vouchers [numbered 1 to ___] in answer to claim.
" 9	X.Y. filed notice for hearing of reference.
" 15	X.Y. [*or* Y Z.] filed registrar's report, &c.

Here insert address for service of documents required to be served on the Plaintiffs.

Here insert address for service of documents required to be served on the Defendants.

Note.—The above minutes are given as such as might ordinarily be required in an action *in rem* for damage by collision, where pleadings have been ordered. In some actions many of these minutes would be superfluous. In others additional minutes would be required.

II. TABLES OF FEES TO BE TAKEN BY THE REGISTRARS, MARSHALS AND PRACTITIONERS, &c., IN ADMIRALTY PROCEEDINGS IN THE EXCHEQUER COURT OF CANADA

I.—BY THE REGISTRAR

1. *For sealing or preparing Instruments, &c.*

	$ cts.
For sealing any writ of summons or other document required to be sealed	50
For preparing any warrant, release, commission, attachment, or other instrument, required to be sealed, or for attending the execution of any bail-bond	2 00
For preparing a receivable order or a receipt for money to be paid out of court	1 00
For preparing and sending any notice, or issuing any appointment	50
For preparing any other document for every folio	30

Note.—The fees for preparing shall include drawing and fair-copying or engrossing.

2. *For Filing.*

On filing any instrument or other document	20

3. *For Evidence, &c.*

For attending at examination of any witness, per hour	1 00
For administering any oath or declaration	20
For taking down and certifying the evidence of any witness examined before him, when the same is not taken down by a shorthand writer, for every folio	20

4. *For the Trial, &c.*

On setting down action for trial	1 00
For attendance at the trial of an action, to be paid by the party whose case is proceeding, per hour	1 00
Swearing each witness	20
On a final decree in an uncontested action	2 00
On a final decree in a contested action	4 00
For attendance before the judge when any order is made or act done, other than pronouncing a final decree	1 00

Note.—The above fees shall include the entry of the decree or order in the minute book.

5. *For References.*

For hearing any reference, according to the case, per day	From	$ 5 00
	To	15 00
For preparing the report of a reference		5 00

6. *For Taxations.*

For taxing a bill of costs:—	
If the bill does not exceed *ten* folios	2 00
For every folio beyond *ten*	20

7. *For Office Copies, Searches, &c.*

For a copy of any document, for every folio (in addition to the fee for sealing)	10
For search	20
For a general search	50

Note.—No search-fee is to be charged to a party to the action, while the action is pending, or for one year after its termination, or to any seaman.

II.—By the Assessors.

For each nautical or other assessor, whether at the examination of witnesses or at the trial of an action, or upon any assessment of damages, or taking of an account, according to the case, in the discretion of the judge, per day	From	$ 5 00
	To	$25 00

Note.—The above fees shall be paid to the registrar, for the assessors, and *in the first instance* by the party preferring the claim.

III.—By a Commissioner to examine Witnesses.

For administering any oath or declaration	$ 20
For taking down and certifying the evidence of any witness examined before him, when the same is not taken down by a shorthand writer, for every folio	20

IV. By a Commissioner to take Bail.

For attending the execution of any bailbond	$ 2 00
For taking any affidavit of justification	50

V.—By the Marshal or Sheriff.

For the service of a writ of summons or subpœna, if served by the marshal or a sheriff.....	$ 1 00
For executing any warrant or attachment.....	4 00
For keeping possession of any ship, goods, or ship and goods (exclusive of any payments necessary for the safe custody thereof), for each day	50

Note.—No fee shall be allowed to the marshal for the custody and possession of property under arrest, if it consists of money in a bank, or of goods stored in a bonded warehouse, or if it is in the custody of a Custom-House officer or other authorized person.

On release of any ship, goods, or person from arrest	2 00
For attending the unlivery of cargo, for each day...	8 00
For executing any commission of appraisement, sale, or appraisement and sale, exclusive of the fees, if any, paid to the appraiser and auctioneer..	4 00
For executing any other commission or instrument..	4 00

On the gross proceeds of any ship, or goods, &c., sold by order of the court:—

If not exceeding $400.....	4 00
For every additional $400, or part thereof.....	2 00

Note.—If the marshal, being duly qualified, acts as auctioneer, he shall be allowed a double fee on the gross proceeds.

For attendance at the trial of an action to be paid by the party whose case is proceeding, per hour..	$ 1 00
Calling each witness.....	20

Note.—If the marshal or his officer is required to go any distance in execution of his duties, a reasonable sum may be allowed for travelling, boat-hire, or other necessary expenses in addition to the preceding fees, but not to exceed 10 cents per mile travelled.

VI.—Fees to be Taken by Appraisers.

Each, per appraisement.....	From $ 2 50
	To $10 00

(This fee may be increased to a sum not exceeding $30.00 in the discretion of the judge.)

VII.—By the Solicitor.

Retaining fee.....	2 00
For preparing a writ of summons (to include attendances in the registry for sealing the same).....	2 50
For bespeaking and extracting any warrant or other instrument prepared in the registry (to include attendances).....	1 00
For serving a writ of summons or a subpœna.....	1 00
For taking instructions for a statement of claim or defence	4 00

For drawing a statement of claim or defence		$ 4 00
For taking instructions for any further pleading		1 00
For drawing any further pleading		2 00
For drawing any other document, for every folio		20
For fair-copying or engrossing any document, for every folio		10
For taking instructions for any affidavit (unless made by the solicitor or his clerk) or for interrogatories or answers, according to the nature or importance thereof	From	1 00
	To	4 00
For taking instructions for brief	From	1 00
	To	4 00
For attending counsel in conference or consultation		2 00
For attending to fee counsel		2 00
For attendance on any motion before the judge :—		
If with counsel		2 00
If without counsel		4 00
For attending the examination of witnesses before the trial, for each day :—		
If with counsel		4 00
If without counsel		8 00
For attendance at the trial for each day	From	4 00
	To	12 00
For attendance at the delivery of judgment, if reserved		2 00
For attendance at the hearing of a reference to the registrar for each day :		
If with counsel	From	$4 00
	To	8 00
If without counsel	From	4 00
	To	20 00
For any other necessary attendance before the judge, or in the registry, or on the marshal, or on the adverse party or solicitor, in the course of the action		1 00
For any necessary letter to the adverse party		50
For serving any notice		20
For extracting and collating any office copy obtained from the registry, for every folio		10
For correcting the press, for every folio		5
For attending the taxation of any bill of costs, not exceeding *ten* folios		2 00
For every folio beyond *ten*		10

Note.—Where more than one document can conveniently be filed, or one document can be filed and another bespoken, at the same time, the fee for one attendance only shall be allowed.

VIII.—By Counsel

Retaining fee		$ 5 00
For settling any pleading, interrogatories, or answers, &c	From	5 00
	To	20 00

For any necessary consultation in the course of the action	From	$ 5 00
	To	10 00
For any motion	From	5 00
	To	15 00
For the examination of witnesses before the trial, for each day	From	10 00
	To	20 00
For the trial of an uncontested action		10 00
For the trial of a contested action, for the first day	From	15 00
	To	50 00
For each day after the first	From	10 00
	To	25 00
For attending judgment if reserved	From	5 00
	To	10 00
For the hearing of a reference to the registrar, for each day	From	10 00
	To	25 00

Note.—Where the same practitioner acts as both counsel and solicitor, he may, for any proceeding in which a counsel's fee might be allowed, charge such fee in lieu of a solicitor's fee.

IX.—By Shorthand Writers.

For taking down and transcribing the evidence, certifying the transcript and transmitting the same to the registrar and supplying three copies thereof to the registrar, per folio 20

If for any reason the evidence is not required to be transcribed, for each hour occupied by the examination ..... $ 1 50

Such fees shall in the first instance be paid to the registrar for the shorthand writer by the party calling the witness.

If any such fee is not paid by the party liable therefor it may be paid by any other party to the proceeding and allowed as a necessary disbursement in the cause, or the Judge may make such order in respect of such evidence and the disposal of the action or proceeding as to him seems just.

Note—If evidence is taken down by a shorthand writer no fee for taking down and certifying to such evidence shall be allowed to the Registrar or Commissioner.

X.—By Witnesses.

To witness residing not more than three miles from the place to which summoned, per day 1 00

To witnesses residing over three miles from such place 1 25

9

Barristers and attorneys and solicitors, physicians and surgeons, when called upon to give evidence in consequence of any professional service rendered by them, or to give opinions, per day.....	5 00
Engineers and surveyors, when called upon to give evidence of any professional service rendered by them, or to give evidence depending upon their skill or judgment, per day.....	5 00

If the witnesses attend in one cause only, they will be entitled to the full allowance.

If they attend in more than one cause they will be entitled to a proportionate part in each cause only.

The travelling expenses of witnesses over ten miles, shall be allowed according to the sums reasonably and actually paid, but in no case shall exceed ten cents per mile travelled.

Since the 10th day of June, 1893, the date at which the Admiralty Rules came into force in Canada, the following General Order of the 12th day of December, 1894, has been made by the Judge of the Exchequer Court of Canada and was duly brought into force by publication in the Canada Gazette, on the fifth day of January, 1895.

The General Order reads as follows, viz :—

IN THE EXCHEQUER COURT OF CANADA.

GENERAL ORDER.

In pursuance of the provisions of "The Colonial Courts of Admiralty Act, 1890," and of "The Admiralty Act, 1891," (Canada), it is ordered that the following additional rules of Court for regulating the practice and procedure (including fees and costs) of the Exchequer Court of Canada in the exercise of its jurisdiction, powers and authority as a Court of Admiralty, shall be in force in the said Court :—

1. Part II of the Appendix to the General Rules and Orders relating to the practice and procedure in Admiralty cases in the Exchequer Court of Canada, is hereby amended by adding thereto the following paragraphs :

XI. BY THE SURROGATE.

Surrogate Judges shall be entitled to receive the following fees from the party making any application to them :

On administering any oath or declaration	$ 50
Upon every *ex parte* application	2 00
Or if engaged more than one hour, per hour	3 00
Not to exceed in all upon any one application	7 50
Upon every contested application, per hour	4 00
Not to exceed in all upon any one application	10 00

Such fees shall be allowed by the Registrar upon the certificate of the Surrogate Judge and may be recoverable by the party paying them as other taxable costs in the discretion of the Judge, or Surrogate Judge as the may be.

XII. BY CRIER.

For any crier employed at the trial of an action under the Judge's direction, per diem ..... $ 1 50

This fee to be paid by the plaintiff in the case and to be allowed by the Registrar as part of the taxable costs.

Dated at Ottawa, the 12th day of December, A.D. 1894.

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

This General Order dealing with the question of Fees only, did not require the approval of either the Governor General in Council or of Her Majesty in Council under the provisions of the Imperial Order in Council of the 15th day of March, 1893. *Vide* p. 21 of Appendix.

A further General Order respecting Surrogate Judges on the Admiralty side of the Exchequer Court of Canada has been made by the Judge of the Exchequer Court on the 12th day of December, 1894, and approved by Order of His Excellency the Governor General in Council of the 10th of January, 1895, and by order of her Majesty in Council of the 8th day of March, 1895, and brought into force by publication in the Canada Gazette on the 4th day of May, 1895.

PRIVY COUNCIL, CANADA } Extract from a Report of the Committee of the Honourable the Privy Council, approved by His Excelleney on the 10th January, 1895.

On a report dated 24th December, 1894, from the Minister of Justice, submitting a General Order made by the Judge of the Exchequer Court of Canada on the 12th December instant, prescribing the jurisdiction, powers and authority of Surrogate Judges in Admiralty.

The Minister observes that this Order, under the Colonial Courts of Admiralty Act, 1890, requires the approval of Her Majesty in Council, and is therefore pursuant to section 25 of the Admiralty Act, 1891, submitted for the approval of Your Excellency in Council, and if approved, should be submitted to Her Majesty in Council for her approval.

The Minister is of opinion that the Order is one which should receive the approval of Your Excellency in Council and he recommends accordingly.

The Committee advise that Your Excellency be moved to forward a certified copy of this Minute, together with a copy of the General Order made by the Judge of the Exchequer Court for Canada to the Most Honourable Her Majesty's Principal Secretary of State for the Colonies, with a request that he will cause it to be submitted to Her Majesty in Council for Her approval.

All of which is respectfully submitted,

(Sgd). JOHN J. McGEE,
Clerk of the Privy Council.

The Honourable the Minister of Justice.

IN THE EXCHEQUER COURT OF CANADA.

GENERAL ORDER.

In pursuance of the provisions of "The Colonial Courts of Admiralty Act, 1890," and of "The Admiralty Act, 1891," (Canada) it is ordered that the following additional rules of Court for regulating the practice and procedure of the Exchequer Court of Canada in the exercise of its jurisdiction, powers and authority as a Court of Admiralty, shall be in force in the said Court :—

1. Any Surrogate Judge shall have and exercise all such jurisdiction, powers and authority as are possessed by the Local Judge in Admiralty of the Exchequer Court in all or any of the following matters :—

(1.) The amendment of writs of summons and the endorsement thereon.

(2.) Service of writs of summons, including service out of the jurisdiction.
(3.) The issue of warrants for the arrest of property.
(4.) Bail, including the determination of the value of property arrested.
(5.) The release of property arrested.
(6.) Applications for sale of property under arrest upon the ground that the property is deteriorating in value.
(7.) To decree commission of sale under last mentioned rule.
(8.) To administer an oath to a witness or party in a cause or proceeding.
(9.) To order any party to an action to make discovery on oath of all documents which are in his possession or power relating to any matter in question therein.
(10.) To direct, amend or strike out interrogatories.
(11.) To order the examination of a witness before trial.
(12.) Costs of applications and orders heard or granted by the Surrogate Judge.

Dated at Ottawa, the 12th day of December, A.D. 1894.

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

(Copy.) P. C. 860 J.

Canada—No. 87.

The Marquis of Ripon to the Earl of Aberdeen,

DOWNING STREET,
27th March, 1895.

MY LORD,—With reference to your despatch No. 10 of the 16th of January, I have the honor to transmit to you for communication to your Government an order of the Queen in Council sanctioning the establishment in the Exchequer Court of Canada in its Admiralty Jurisdiction of additional Rules of Court prescribing the jurisdiction, powers and authority of Surrogate Judges in Admiralty.

I have, &c.,
(Sd.) RIPON.

Governor-General,
&c., &c., &.,

At the Court at Windsor, the 8th day of March, 1895.

PRESENT :

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

Whereas there was this day read at the Board a Memorial from the Right Honourable the Lords Commissioners of the Admiralty, dated the 2nd day of March, 1895, in the words following, viz. :—

"Whereas by an Act passed in the fifty-fourth year of Your Majesty's Reign, entitled "The Colonial Courts of Admiralty Act, 1890," it was, amongst other things, provided that Rules of

Court for regulating the procedure and practice (including fees and costs) in a Court in a British possession in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same authority and in the same manner as rules touching the practice, procedure, fees and costs in the said Court in the exercise of its ordinary civil jurisdiction respectively, are made, but that such rules of Court shall not come into operation until they have been approved by Your Majesty in Council, but on coming into operation shall have full effect as if enacted in the said Act. And whereas by Your Majesty's Order-in-Council dated the fifteenth day of March, 1893, Your Majesty was graciously pleased to direct that the Rules of Court annexed thereto should be established and be in force in the Exchequer Court of Canada in its Admiralty Jurisdiction. And whereas it appears to us and to Your Majesty's Secretary of State for the Colonies to be expedient that the following additional Rules of Court, prescribing the jurisdiction, powers and authority of Surrogate Judges in Admiralty, having been duly prepared by the proper authority as required by the said Colonial Courts of Admiralty Act, 1890, and by the Admiralty Act, 1891, (Canada) should be established and be in force in the Exchequer Court of Canada in its Admiralty jurisdiction. 1. Any Surrogate Judge shall have and exercise all such jurisdiction, powers and authority as are possessed by the Local Judge in Admiralty of the Exchequer Court in all or any of the following matters:

"(1.) The amendment of writs of summons and the endorsement thereon.

"(2.) Service of writs of summons including service out of the jurisdiction.

"(3.) The issue of warrants for the arrest of property.

"(4.) Bail, including the determination of the value of property arrested.

"(5.) The release of property arrested.

"(6.) Applications for sale of property under arrest upon the ground that the property is deteriorating in value.

"(7.) To decree commission of sale under last mentioned Rule.

"(8.) To administer an oath to a witness or party in a cause or proceeding.

"(9.) To order any party to an action to make discovery on oath of all documents which are in his possession or power relating to any matter in question therein.

"(10.) To direct, amend, or strike out interrogatories.

"(11.) To order the examination of a witness before trial.

"(12.) Costs of applications and orders heard or granted by the Surrogate Judge. (*a*)

(*a*) The Surrogate Judge should, immediately after an application is made or disposed of, transmit to the office of the Registrar of the Local Admiralty District, such documents which have been filed with him or which will acquaint the Local Registrar with what has taken place before him.

"Now, therefore, we beg leave to recommend that Your Majesty will be graciously pleased by Your Order in Council to direct that the said additional Rules shall be established and be in force in the Exchequer Court of Canada in its Admiralty jurisdiction."

Her Majesty having taken the said memorial into consideration was pleased, by and with the advice of Her Privy Council to approve of what is therein proposed. And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly.

C. L. PEEL.

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