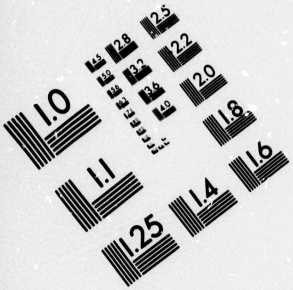

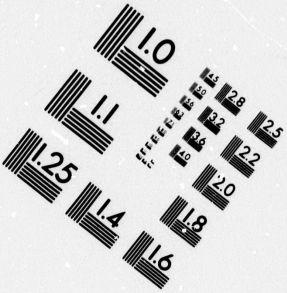

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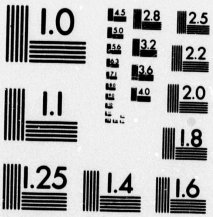

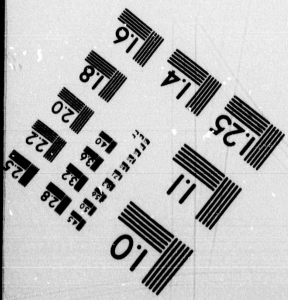

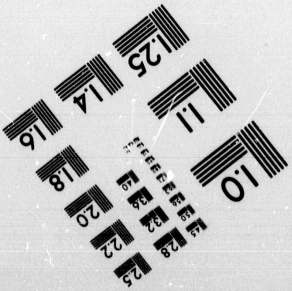

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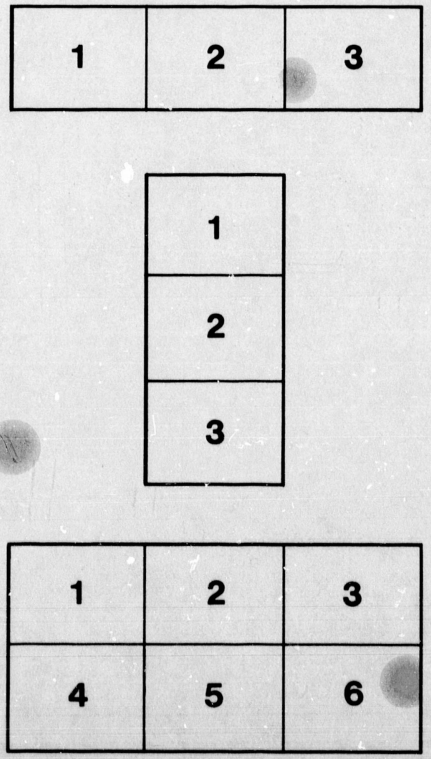

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THE PRACTICE

OF THE

SUPREME COURT

OF

CANADA.

BY

ROBERT CASSELS, Esq.,

ONE OF HER MAJESTY'S COUNSEL,

AND

REGISTRAR OF THE COURT.

TORONTO:

CARSWELL & Co., LAW PUBLISHERS.

1888.

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—OF THE—

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Appointed 8th October, 1875.
Resigned 10th January, 1879.

HON. SIR WILLIAM JOHNSTONE RITCHIE, KNIGHT.
Appointed 11th January, 1879.

JUDGES.

HON SIR WILLIAM JOHNSTONE RITCHIE, KNIGHT.
Appointed 8th October, 1875.

HON. SAMUEL HENRY STRONG.
Appointed 8th October, 1875.

HON. JEAN THOMAS TASCHEREAU.
Appointed 8th October, 1875.
Resigned 6th October, 1878.

HON. TÉLÉSPHORE FOURNIER.
Appointed 8th October, 1875.

HON. WILLIAM ALEXANDER HENRY.
Appointed 8th October, 1875.
Died 5th May, 1888.

HON. HENRI ELZEAR TASCHEREAU.
Appointed 7th October, 1878.

HON. JOHN WELLINGTON GWYNNE.
Appointed 14th January, 1879.

HON. CHRISTOPHER SALMON PATTERSON.
Appointed 27th October, 1888.

OFFICERS OF THE COURT.

ROBERT CASSELS, ESQ., Q.C.
Appointed Registrar 8th October, 1875.

GEORGE DUVAL, ESQ., ADVOCATE.
Appointed Reporter, 20th January, 1876.

CHARLES H. MASTERS, ESQ., BARRISTER-AT-LAW.
Appointed Assistant Reporter, temporarily, 17th September, 1885.

ARCHIBALD SANDWITH CAMPBELL, ESQ., SOLICITOR.
Appointed Assistant Reporter 3rd March, 1886.
Died 3rd September, 1886.

CHARLES H. MASTERS, ESQ., BARRISTER-AT-LAW.
Appointed Assistant Reporter 1st October, 1886.

MINISTERS OF JUSTICE AND ATTORNEYS-GENERAL

OF THE DOMINION OF CANADA SINCE THE ORGANIZATION OF THE COURT.

HON. EDWARD BLAKE, Q.C.
Appointed 19th May, 1875.

HON. RODOLPHE LAFLAMME, Q.C.
Appointed 8th June, 1877.

HON. JAMES McDONALD, Q.C.
Appointed 17th October, 1878.

HON. SIR ALEXANDER CAMPBELL, K.C.M.G., Q.C.
Appointed 20th May, 1881.

HON. SIR JOHN SPARROW DAVID THOMPSON, K.C.M.G., Q.C.
Appointed 25th September, 1885.

ABBREVIATIONS.

A. & E.	Adolphus and Ellis.
Art.	Article.
C.	Chapter.
Can. S. C. R.	Reports of the Supreme Court of Canada.
C. C. P.	Code of Civil Procedure of the Province of Quebec.
C. D. Ch. D. Chy. D.	Law Reports, Chancery Division.
C. J.	Chief Justice.
C. L. J.	Canada Law Journal.
C. L. T.	Canadian Law Times.
C. P. D.	Law Reports, Common Pleas Division.
C. S. N. B.	Consolidated Statutes of New Brunswick.
Dig. Dig. S. C. D.	Cassels's Digest of Supreme Court Decisions.
H. M.	Her Majesty.
Ibid.	At the same place.
J.	Judge.
JJ.	Judges.
L. R.	Law Reports.
M. L. R. Q. B.	Montreal Law Reports, Queen's Bench.
M. R.	Master of the Rolls.
N. B.	New Brunswick.
Ont. App. R.	Ontario Appeal Reports.
Ont. P. R.	Ontario Practice Reports
P.	Page.

P. D.....Law Reports, Probate Division.
Prac. P. C.....Practice of the Privy Council.
P. Q.....Province of Quebec.
Q. B.....Queen's Bench.
R. S. C.....Revised Statutes of Canada.
R. S. O.....Revised Statutes of Ontario.
S.....Section.
SS.....Sections.
S-S.....Sub-section.
S. C.....Same case.
Sch.....Schedule.
S. & E. C. A.....Supreme and Exchequer Courts Act.
T. L. R.....Times Law Reports.
V.....Victoria.
W. R.....Weekly Reporter.

INTRODUCTION.

BY section 101 of the British North America Act, 1867, the Parliament of Canada was authorized to provide for the constitution, maintenance and organization of a general court of appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada. Under the power given by this section of the constitution, the Parliament of Canada on the 8th April, 1875, passed an Act, 38 Vic. c. 11, establishing the Supreme Court of Canada and the Exchequer Court of Canada, the former to have an appellate, civil and criminal jurisdiction within and throughout the Dominion of Canada, and the latter court to exercise concurrent original jurisdiction with the courts of the Provinces in the Dominion of Canada in all cases in which it should be sought to enforce any law of the Dominion relating to the revenue, and in all other suits of a civil nature at common law or equity in which the Crown in the interest of the Dominion should be plaintiff or petitioner, and exclusive original jurisdiction in all cases in which demand should 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. As the scope of this work is confined entirely to the jurisdiction

and practice of the Supreme Court of Canada, no further reference need be made to the Exchequer Court beyond mention of the fact that until the passing of 50-51 Victoria c. 16, the Judges of the Supreme Court were also Judges of the Exchequer Court, each judge, sitting alone, constituting the latter court, and all the judges, or at least five, constituting the appellate tribunal.

On the 17th September 1875, by proclamation, the Act passed on the 8th April preceding, was brought into force as respected the appointment of judges, registrar, clerks and servants of the court, the organization thereof, and the making of general rules and orders. On the 8th of October following the judges and registrar were appointed; and the Chief Justice, the Hon. William Buell Richards, afterwards Sir William Buell Richards, took the oath of office before His Excellency Lieut.-General Sir William O'Grady Haly, the Administrator of the Government, in Council. On the 8th of November following, the Chief Justice administered the oath of office to the puisnè judges of the Court. On the 10th January, 1876, by proclamation, the 11th day of January, 1876, was appointed as the day and time at and after which the judicial functions of the court should take effect and be exercised. And on the 7th February, 1876, general rules relating to the practice of the Supreme Court were promulgated by the judges. The first sitting of the Supreme Court for the hearing of appeals was on the 17th of January, 1876, but no appeals were ready to be heard. The first session of the court at which appeals were heard was on the 5th day of June, 1876, when three appeals were argued. Since the organization of the court over 800 appeals have been filed, representing directly in themselves a considerable amount of valuable results, and indirectly, no doubt, a far reaching beneficial influence on the jurisprudence and administration of justice throughout

the country. The business of the court has been steadily increasing, until for the present sittings, the third of the year, there stand inscribed for hearing about 60 appeals, sent from all parts of the Dominion.

Since 1875, ten or eleven statutes have been passed affecting the jurisdiction or practice, or both, of the Supreme Court, and numerous amendments and additions to the rules have been made. Under these circumstances a work consolidating the statutes and rules and noting the many decisions given by the court relating to the practice and jurisdiction of the court, may be found convenient.

It may not be out of place also by way of introduction to summarize briefly the practice to be followed when appealing to the Supreme Court.

The first point upon which a solicitor should satisfy himself after having determined upon appealing is as to the right to appeal. Will the appeal lie? Has the case originated in a superior court? or, if not, does it come within the exceptional provisions contained in sub-sections (*h*) and (*i*) of section 24 of the Act? Has it been adjudicated upon by the highest court of last resort in the province? Or can it be brought within the exceptions provided for by sub-section 2, or sub-section 3, of section 26? Is the judgment a final judgment, or is it an exception to the general provision that appeals lie only from final judgments? Is the case one in which a limit is fixed as to the appealable amount, or is it one of the exceptional cases though not of the appealable amount? (See notes to sections 24, 26 and 29 of the Act.—See also section 76 of the Winding-up Act.)

Having satisfactorily answered these questions, the next point which arises is as to whether a notice of appeal or of

intention to appeal has to be given, and the delay within which such notice, if required, must be given. (See notes to section 41 of the Act.)

Having given the required notice of appeal, or intention to appeal, the next point which arises for consideration is as to security. The approving of the security is a mode of allowing the appeal, and when given the appeal has been brought and is then within the jurisdiction of the Supreme Court. Now section 40 of the Act provides that every appeal, (certain exceptions being provided for) "shall be brought within sixty days from the signing or entry or pronouncing of the judgment appealed from." Does the time run from the signing or entry or pronouncing of the judgment? (See notes to this section 40 for the cases decided on this point). The application to have security approved may, under section 40, be made either in the court below or in the Supreme Court, and there are certain cases in which special leave to appeal must be obtained from the Supreme Court or a Judge thereof,—for instance, appeals under the Winding-up Act, and certain appeals from the Exchequer Court. If the sixty days be too short a time to perfect the security an application must be made under section 42 of the Act based upon the "special circumstances" required by that section. It should be borne in mind that such an application must be made to the "court appealed from or a judge thereof." Having elected in which court to make the application for approval of the security, the bond should be prepared and steps taken, according to the usual practice of the court to be applied to, to have the bond approved. In the Supreme Court four clear days notice should be given to the opposite party of the intention to apply and the necessary instructions sent to the Ottawa agent, who should be regularly appointed pursuant to the requirements of rule 16. The

appointment of an agent at the earliest moment is an important step in the appeal. It is entirely irregular to communicate with the Registrar of the Court as to any proceeding in appeal. All applications not strictly applications which should be made to the full court are now made to the Registrar sitting as a Judge in Chambers under the provisions of rule 83. There are but two exceptions in such rule.

After the security has been approved of, the appellant has one month within which to settle and print the case. No special rules have been made by the Supreme Court as to the practice to be adopted on settling the case. The statute (section 44) provides that it shall be stated by the parties or, in the event of difference, be settled by the court appealed from or a judge thereof. The appellant's solicitor can send to the solicitor for the respondent a draft of the case and the respondent's solicitor can return it within a reasonable time with such suggestions or alterations as he may think advisable, and the draft can be sent from one to the other until finally signed as agreed upon, or until a difference arises which can be settled only by an application to a judge. Or an agreement can be signed by the solicitors as to what documents, specifying them clearly, the case shall contain. Unnecessary material should be carefully omitted. As to what should be inserted see section 44 of the Act and notes—page 34. Upon the appellant's solicitor will then fall the duty of printing the case. The rules of the court regulating the form and style of the case should be closely followed, and attention is here called to the remarks on this subject at page 106. It may happen that the length of the case, or other circumstances, makes it evident that with reasonable diligence it will not be possible to overtake the printing

within the month after security has been allowed. The solicitor for the appellant, to avoid an application on the part of the respondent to dismiss the appeal for want of prosecution, should then apply in the Supreme Court, in Chambers, for further time, giving the usual four clear days' notice of the application to his opponent and filing an affidavit in the Supreme Court in support of his application. When printed, a copy of the case should be submitted to the proper officer of the court below, who, upon being satisfied that it is the case stated by the parties, or settled by the judge, and paid the usual fees, should certify and transmit it to the Registrar of the Supreme Court, with a certified copy of the bond given as security and certified copies of Exhibits. (See rule 10). It may be less expensive and more advantageous to the satisfactory argument of the appeal to obtain from the Supreme Court, in Chambers, an order for the transmission of the original Exhibits. The case should be filed in the office of the Registrar of the Supreme Court twenty clear days before the first day of the session at which it is to be brought on for hearing. At least fifteen days before the first day of the session notice of hearing must be served. (See rules 11-15).

Each party has in the meantime prepared and printed a correct but complete statement of the facts of the case and the reasons and authorities upon which he intends to rely. This document is called a factum. The factums of both parties should be deposited with the Registrar at least fifteen days before the first day of the session. (Rule 23). As to what the factum should contain and how it should be printed see rules 24 and 25. The appeal must be inscribed by the appellant for hearing; that is a request must be filed with the Registrar to place it on the list of

appeals for hearing, at least fourteen days before the first day of the session, at which the appeal is to be heard. (Rule 21). The inscription cannot be made unless the appellant's factum has been deposited. If the respondent has failed to deposit his factum within the time limited by the rule in that behalf, the appellant inscribes *ex parte*. The appeal is then placed on the proper list by the Registrar, (see section 38), and will be called by the court when reached.

After judgment is delivered the agent for the successful party should apply to the Registrar for an appointment to settle the minutes of the judgment and to tax the costs. The agent drafts the minutes and bill of costs and serves a copy of these papers with the appointment on the agent of the other party. Both agents attend before the Registrar at the time mentioned in the appointment, and the minutes of judgment are settled and the bill taxed by the Registrar, who issues to the agent an allocatur of the costs, and as soon as judgment is entered certifies and transmits it to the proper officer of the court of original jurisdiction, who thereupon makes all proper and necessary entries thereof; and all subsequent proceedings may be taken thereupon as if the judgment had been given or pronounced in the said court.

The foregoing is a brief sketch of the proceedings in an ordinary appeal in the Supreme Court. The points touched upon will be found elaborated in the notes to the various sections of the Act and rules of the court. There are provisions and rules relating to certain special classes of appeals, such as election appeals, exchequer appeals, criminal appeals and appeals under the Winding-up Act, which it is unnecessary to deal with here. They are set

out in their proper place in the following pages, and can be readily found by referring to the index.

In all cases the practice is simple and has worked smoothly and satisfactorily; but simple as it is, practitioners in the court may find the following work useful.

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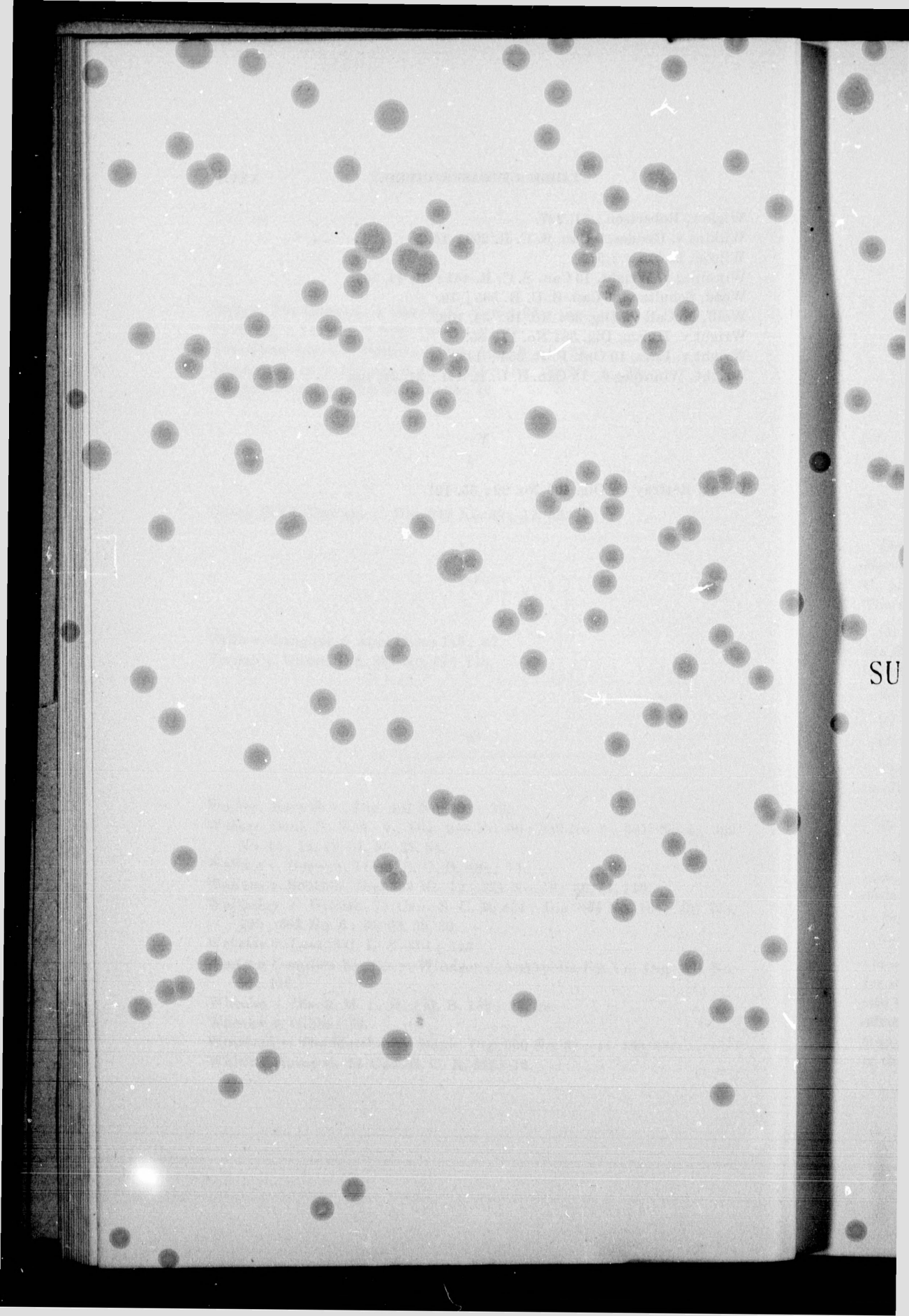


PART I.

SUPREME AND EXCHEQUER COURTS ACT.

REVISED STATUTES OF CANADA.

CHAPTER 135.

A.D. 1886.

An Act respecting the Supreme and Exchequer Courts.

The Revised Statutes of Canada came into force on the 1st day of March, 1887, by proclamation issued on the 24th January, 1887, (see R. S. C., p. 15.), under the authority of section 4 of chapter 4 of 49 Victoria. Thereupon among other Acts which were repealed were:

(*a*) The Supreme and Exchequer Courts Act, 38 V., c. 11, by which the Supreme and Exchequer Courts of Canada were originally established.

(*b*) The Supreme Court Amendment Act, 1876, 39 V., c. 26.

(*c*) The Supreme Court Amendment Act, 1879, 42 V., c. 39.

(*d*) The Supreme Court Amendment Act, 1880, 43 V., c. 34.

These repealed Acts were consolidated by R. S. C., c. 135, which 'may be cited as "The Supreme and Exchequer Courts Act."' (s. 1, *infra*).

49 V., c. 4, s. 8, provides:

"**8.** The said Revised Statutes shall not be held to operate as new laws, but shall be construed and have effect as a consolidation, and as declaratory of the law as contained in the said Acts and parts of Acts so repealed, and for which the said Revised Statutes are substituted:

"2. But if upon any point the provisions of the said Revised Statutes are not in effect the same as those of the repealed Acts and parts of Acts for which they are substituted, then, as respects all transactions, matters and things subsequent to the time when the said Revised Statutes take effect, the provisions contained in them shall prevail, but as respects all transactions, matters and things anterior to the said time, the provisions of the said repealed Acts and parts of Acts shall prevail."

By 50-51 V., c. 16, "An Act to amend 'The Supreme and Exchequer Courts Act' and to make better provision for the trial of claims against the Crown," numerous amendments have been made in the jurisdiction and practice of the Supreme Court. The most important change made by this Act is the taking away all original Exchequer Court jurisdiction from the Supreme Court Judges.

By 50-51 V., c. 50, "an Act to amend the law respecting Procedure in Criminal Cases," the sections in the Supreme and Exchequer Courts Act relating to criminal appeals have been repealed and substantially re-enacted as part of the Criminal Procedure Act. It contained also a provision making the judgment of the Supreme Court final in any such case, and taking away any appeal to England. By 51 V., c. 43, the sub-section dealing with this question of appeal has been repealed and re-enacted, in terms intended to make it still clearer that no appeal to the Privy Council should lie in criminal matters.

And finally, by 51 V., c. 37, s. 19, of the Supreme and Exchequer Courts Act, relating to the quorum of the court, as amended by 50-51 V., c. 16, sch. A., has been repealed and another section substituted to enlarge the power to give judgments in certain circumstances; and the jurisdiction of the court has been further extended to certain cases not arising in a superior court.

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 V., c. 11, s. 81.

Interpretation. — "Supreme Court." — "Exchequer Court."—"Judge."—"Judgment."—"Final judgment."—"Appeal."—"The court appealed from."

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.

(*c*) The expression "judge" includes the chief justice.

(*d*) The expression "judgment," when used with reference to the court appealed from, includes any judgment, rule, order, decision, decree, decretal order, or sentence thereof; and when used with reference to the Supreme Court, includes any judgment or order of that court.

(*e*) The expression "final judgment" means any judgment, rule, order, or decision, whereby the action, suit, cause, matter, or other judicial proceeding, is finally determined and concluded.

(*f*) The expression "appeal" includes any proceeding to set aside or vary any judgment of the court appealed from.

(*g*) The expression "the court appealed from" means the court from which the appeal is brought directly to the Supreme Court, whether such court is a court of original jurisdiction or a court of appeal. 38 V., c. 11, ss. 2, 5 & 11; 42 V., c. 39, s. 9.

See also the Interpretation Act, R. S. C., c. 1; Appendix I.

Courts continued.

[**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 substituted by 50-51 V., c. 16, sch. A. The section originally provided for the continuance also of the Exchequer Court.

By section 101 of the British North America Act, 1867, it is provided that:

"The Parliament of Canada may, notwithstanding anything in this Act, from time to time, provide for the constitution, maintenance, and organization of a general court of appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada."

Under this section the Supreme Court of Canada was organized and established in 1875 by 38 V., c. 11. But it can be said to be in only a limited sense a general court of appeal for Canada, for the existing right of appeal in the various provinces to the Privy Council has been left untouched. Nor can it be called a final court of appeal for Canada, inasmuch as the Privy Council has frequently entertained appeals from its judgments by virtue of the exercise of the royal prerogative. See section 71 and notes. See also *Criminal Appeals* and notes to, 50-51 V., c. 50, s. 1.

THE JUDGES.

Constitution of court.

4. The Supreme Court shall consist of a chief justice and five puisné judges, who shall be appointed by the Governor in Council by letters patent under the Great Seal.

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 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.

Judges from bar of Quebec.

3. Two at least of the judges of the court shall be appointed from among the judges of the Court of Queen's Bench, or of the Superior Court, or the barristers or advocates, of the Province of Quebec.

No other office of profit to be held.

4. No judge of the court shall hold any other office of emolument, either under the Government of Canada or under the government of any province of Canada.

Residence.

5. The judges of the court shall reside at the city of Ottawa, or within five miles thereof. 38 V., c. 11, s. 3, part, and ss. 4 & 10.

Tenure of office.

5. The judges 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. 38 V., c. 11, s. 5.

6. [Repealed by 50-51 V., c. 16, sch. A.]

Salaries and how payable.

7. There shall be paid and payable out of the Consolidated Revenue Fund of Canada, the yearly sums following, as and for the salaries of the said judges, that is to say: to the chief justice the sum of eight thousand dollars, and to each of the puisné judges the sum of seven thousand dollars, which sums 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 entitled to receive the same; and if any judge resigns his office or dies, he or his executor or administrator shall be entitled to receive such proportionate part of the salary aforesaid as has accrued during the time that he has executed such office since the last payment. 38 V., c. 11, s. 6.

As amended by 50-51 V., c. 16, sch. A. The original section has been amended by striking out the words "as judges of both courts" after the word "judges" in the third line.

Retiring allowances and how payable.

8. If any judge has continued in the office of judge of [the said 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 in any of the provinces of Canada, for periods amounting together to fifteen years or upwards, or becomes afflicted with a per-

manent 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, 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. 38 V., c. 11, s. 7.

As amended by 50-51 V., c. 16, sch. A. The word "Courts" in the second line has been changed to "Court."

Oath to be taken.

9. Every judge shall, previously to entering upon the duties of his office as such judge, take an oath in the form following:

Form of oath.

"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 chief justice (*or* as one of the judges) of the Supreme Court of Canada. So help me God." 38 V., c. 11, ss. 8 and 60.

As amended by 50-51 V., c. 16, sch. A. The original section has been amended by striking out the words "and of the Exchequer Court" after the word "Court."

How administered.

10. Such oaths shall be administered to the chief justice before the Governor-General, or person administering the Government of Canada, in Council, and to the puisné

judges by the chief justice, or, in his absence or illness, by any other judge of the court present at Ottawa. 38 V., c. 11, s. 9; 42 V., c. 39, s. 12.

REGISTRAR AND OTHER OFFICERS.

Appointment of registrar—Clerks and servants.

11. 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 Supreme 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 six hundred dollars per annum; and the Governor in Council may, from time to time, appoint such other clerks and servants of the Supreme Court as are necessary, all of whom shall hold office during pleasure. 38 V., c. 11, s. 69.

As amended by 50-51 V., c. 16, sch. A. The original section has been amended by striking out the words "and of the Exchequer Court" after the words "Supreme Court" in the 9th line.

By Rule 83 the Registrar has been given all the powers and authority of a Judge in Chambers, except in *habeas corpus* and *certiorari* matters, subject to an appeal to a judge. Under the provisions of section 112 of the Act, he also acts as Publisher of the Reports. And by 51 V., c. 37, s. 4. he has the management and control of the Library of the Court, under the supervision of the Minister of Justice.

Reporters.

[**13.** The Governor in Council may appoint a reporter and 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.]

This section has been substituted for original section by 50-51 V,, c. 16, sch. A. Under the authority of section 112 the Registrar is the Publisher of the Reports.

Civil Service and Superannuation Acts to apply.

14. The provisions of "The Civil Service Act" and of "The Civil Service Superannuation Act" shall, so far as applicable, extend and apply to such officers, clerks, and servants at the seat of Government. 39 V., c. 26, s. 38.

Sheriff.

15. The sheriff of the county of Carleton, in the Province of Ontario, shall be *ex officio* an officer of the Supreme Court, and shall perform the duties and functions of a sheriff in connection therewith. 40 V., c. 22, s. 3.

As amended by 50-51 V., c. 16, sch. A. The original section has been amended by striking out the words "and of the Exchequer Court" after the words "Supreme Court."

The remuneration of the sheriff for attendance on the Supreme Court is regulated by order-in-council.

BARRISTERS AND ATTORNEYS.

Who may practise as barristers.

16. All persons who are barristers or advocates in any of the Provinces, may practise as barristers, advocates and counsel in the Supreme Court. 38 V., c. 11, s. 76.

As amended by 50-51 V., c. 16, sch. A. The original section has been amended by striking out the words "and the Exchequer Court" at the end thereof.

And as solicitors.

17. All persons who are attorneys or solicitors of the superior courts in any of the Provinces, may practise as attorneys, solicitors and proctors in the Supreme Court. 38 V., c. 11, s. 77.

As amended by 50-51 V., c. 16, sch. A. The original section has been amended by striking out the words "and Exchequer Court" at the end thereof.

Practitioners to be officers of the court.

18. All persons who may practise as barristers, advocates, counsel, attorneys, solicitors or proctors in the Supreme Court, shall be officers of such [court]. 38 V., c. 11, s. 78.

As amended by 50-51 V., c. 16, sch. A. The original section has been amended by striking out the words "or Exchequer Court" after the words "Supreme Court" and by substituting the word "Court" for "Courts respectively" at the end of the section.

See Rule 16 and notes as to the appointment of agents or election of domicil by solicitors and attorneys practising in the Supreme Court.

THE SUPREME COURT.

SESSIONS AND QUORUM.

Quorum of judges—Judgment may be given by a majority of the judges who have heard the case.

19. [Any five of the judges of the Supreme Court shall constitute a quorum and may lawfully hold the court: Provided always, that it shall not be necessary for all the judges who have heard the argument in any case to be present in order to constitute the court for delivery of judgment in such case, but in the absence of any judge, from illness or any other cause, judgment may be delivered by a majority of the judges who were present at the hearing; and in such case it shall not be necessary for five judges to be present at the delivery of such judgment; and any judge who has heard the case and is absent at the delivery of judgment, may hand his opinion in writing to any judge present at the delivery of judgment, to be read or announced in open court, and then to be left with the registrar or reporter of the court.] 38 V., c. 11, ss. 3 & 12; 42 V., c. 39, s. 18.

The above is the section substituted by the Act passed in 1888, 51 V., c. 37, "An Act further to amend 'The Supreme and Exchequer Courts

Act,' chapter one hundred and thirty-five of the Revised Statutes of Canada," for sec. 19 of the revised Act, as amended by 50-51 V., c. 16, sch. A.

The section thus substituted has been considered by the court sufficiently wide to enable judgment to be given by a majority of judges in cases in which one of the five judges who have constituted the quorum of the court for hearing such cases has died before the delivery of judgment.

Rule 73 provides that, "If it happens at any time that the number of judges necessary to constitute a quorum for the transaction of business to be brought before the court is not present, the judge or judges then present may adjourn the sittings of the court to the next or some other day, and so on from day to day, until a quorum shall be present."

Three sessions of appeal yearly.

20. The Supreme Court, for the purpose of hearing and determining appeals, shall hold in each year, at the city of Ottawa, three sessions; the first beginning on the third Tuesday of February, the second, on the first Tuesday in May, and the third, on the fourth Tuesday in October, in each year; and each of the said sessions shall be continued until the business before the court is disposed of. 42 V., c. 39, s. 16.

Power to adjourn.

21. The Supreme Court may adjourn any session from time to time, and meet again at the time appointed for the transaction of business; and notice of such adjournment and of the day fixed for the continuance of such session shall be given by the registrar in the *Canada Gazette*. 38 V., c. 11, s. 14, *part*.

The Court may be convened at any time.

22. The court may be convened at any time by the chief justice, or, in the event of his absence or illness, by the senior puisné judge, in such manner as is prescribed by the rules of court. 38 V., c. 11, s. 14, *part*.

Rule 12 provides for the publication in the *Canada Gazette* of a notice convening the court, and for the form of such notice, see Schedule A. appended to the rules.

Rule 73 provides that, "If it happens at any time that the number of judges necessary to constitute a quorum for the transaction of the business to be brought before the court is not present, the judge or judges then present may adjourn the sittings of the court to the next or some other day, and so on from day to day until a quorum shall be present."

JURISDICTION—APPEALS.

Jurisdiction over all Canada.

23. The Supreme Court shall have, hold and exercise an appellate, civil and criminal jurisdiction within and throughout Canada. 38 V., c. 11, s. 15.

Appeal.

24. An appeal shall lie to the Supreme Court,—

From final judgments.

(*a*) From all final judgments of the highest court of final resort now or hereafter established in any Province of Canada, whether such court is a court of appeal or of original jurisdiction, in cases in which the court of original jurisdiction is a superior court ;

Upon a special case.

(*b*) From the judgment upon a special case unless the parties agree to the contrary, and the Supreme Court shall draw any inference of fact from the facts stated in the special case which the court appealed from should have drawn ;

Points reserved.

(*c*) From the judgment upon any motion to enter a verdict or non-suit upon a point reserved at the trial ;

Motion for new trial.

(*d*) From the judgment upon any motion for a new trial upon the ground that the judge has not ruled according to law;

As to notice of appeal to be given in cases specified in paragraphs (*b*), (*c*) and (*d*), see section 41.

Decrees in equity courts.

(*e*) From any judgment, decree, decretal order, or order in any action, suit, cause, matter or other judicial proceeding originally instituted in any superior court of equity in any Province of Canada other than the Province of Quebec, and from any judgment, decree, decretal order, or order in any action, suit, cause, matter or judicial proceeding, in the nature of a suit or proceeding in equity, originally instituted in any superior court in any Province of Canada other than the Province of Quebec;

See also section 26, sub-section 3, and section 27.

Motion to set aside award.

(*f*) From the judgment, rule, order or decision upon any motion to set aside an award, or upon any motion by way of appeal from an award made in any superior court in any of the Provinces of Canada other than the Province of Quebec;

Habeas corpus, mandamus and municipal by-laws.

(*g*) From the judgment in any case of proceedings for or upon a writ of *habeas corpus*, not arising out of a criminal charge,—and in any case of proceedings for or upon a writ of *mandamus*,—and in any case in which a by-law of a municipal corporation has been quashed by rule or order of court, or the rule or order to quash it has been refused after argument. 38 V., c. 11, s. 11, *part*, s. 17, *part*, *and* ss. 18, 19, 20 *and* 23;—42 V., c. 39, ss. 1, 4 *and* 13.

[(*h*) And in cases in the Provinces of Nova Scotia, New Brunswick, British Columbia 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.]

Paragraph (*h*) has been added by 50-51 V., c. 16, sch. A., and amended by section 2 of chapter 37 of 51 V., an Act further to amend the Supreme and Exchequer Courts Act, by which British Columbia was added to the other Provinces named in the paragraph.

The jurisdiction of the county courts in the various provinces named in this paragraph is regulated by the following statutes: Nova Scotia: Revised Statutes, 5th series, c. 105, ss. 16, 17, 27, 91. New Brunswick: 45 V., c. 9, ss. 2 & 3, and C. S. N. B., c. 51, s. 51. British Columbia: 48 V., c. 7. Prince Edward Island, 41 V., c. 12.

For extended extracts from these statutes, see Appendix II.

[(*i*) And also by leave of the court or a judge thereof from the decision of the Supreme Court of the North-west Territories, although the matter may not have originated in a superior court.]

By section 7 of the Interpretation Act, (see Appendix I.,) paragraph 13, the expression "Province" includes the North-west Territories; and by paragraph 31, of the same Act, the expression "Superior Court" means in the North-west Territories, the Supreme Court of the North-west Territories.

By 49 V., c. 25, s. 2, it is provided that:

"Every Act of the Parliament of Canada, except in so far as otherwise provided in any such Act, and except in so far as the same is, by its terms, applicable only to one or more of the Provinces of Canada, or in so far as any such Act is, for any reason, inapplicable to the Territories, shall, subject to the provisions of this Act, apply and be in force in the Territories."

Further, 50-51 V., c. 16, sch. A., has amended section 58 of the Supreme and Exchequer Courts Act, by inserting therein the words, "North-west Territories," thus providing for the entry of appeals from the Territories on the list of appeals to be heard.

It would seem that under these provisions an appeal would lie from the Supreme Court of the North-west Territories. But if any doubt existed

on this point it has been removed by the amendment made by the addition of paragraph (*i*) to section 24. It is submitted, however, that this amendment has been made to extend a jurisdiction already given. If so, the word "Court" in this paragraph meaning the Supreme Court of Canada, (see section 2, paragraph (*a*), Supreme and Exchequer Courts Act,) the leave to appeal must be obtained from this court or a judge thereof when an appeal is sought in a case which has not originated in the Supreme Court of the North-west Territories. But when a case has originated in the last mentioned court, the leave may be granted by either the Supreme Court of Canada or a judge thereof, or by the Supreme Court of the Territories or a judge thereof, as in other cases to which section 46 of the Supreme and Exchequer Courts Act is applicable.

REQUIREMENTS TO GIVE JURISDICTION.

1. The first essential to give jurisdiction is that the case shall have originated in a Superior Court, if not coming within the exceptions in paragraphs (*h*) and (*i*) of section 24.

See *Beamish* v. *Kaulbach*, 3 Can. S. C. R. 704, in which the cause originated in the Court of Wills and Probate of Lunenburg, Nova Scotia.

Major v. *Corporation of the city of Three Rivers*, Dig. S. C. D. p. 241, No. 26, followed in *Mayor, etc., of Terrebonne* v. *The Sisters of the Providence Asylum*, *Ibid.* p. 253, No. 43, in which the action originated in the Circuit Court of the Province of Quebec.

The Queen v. *Nevins*, *Ibid.* p. 246, No. 33, in which the proceedings originated in a conviction by a justice of the peace, and had been brought by *certiorari* before the Court of Queen's Bench for Manitoba.

Cases originating in a county court or other court of inferior jurisdiction, subject to the exceptions provided for by paragraphs (*h*) and (*i*), would not be appealable to the Supreme Court, although they may be appealable to the highest Court of Appeal of the Province.

2. The appeal must come from the highest court of final resort in a Province. See section 26, which is an enlargement of paragraph (*a*) of section 24, and which makes certain exceptions to the general rule.

In *Kelly* v. *Sulivan*, 1 Can. S. C. R. 1., it was held that the Supreme Court of Judicature of Prince Edward Island is the court of last resort in that Province. In that case it was contended that the Lieutenant-Governor in Council constituted a court of error and appeal.

In *Danjou* v. *Marquis*, 3 Can. S. C. R. 251, it was held that the appeal in cases of *mandamus* was restricted to the highest court of final resort in

the Province, and that an appeal will not lie from any court in the Province of Quebec but the Court of Queen's Bench.

See also *Macdonald* v. *Abbott*, 3 Can. S. C. R. 278.

3. The appeal must be from a final judgment—paragraph (*a*), section 24.

Section 28 further provides as follows:

"Except as provided in this Act or in the Act providing for the appeal an appeal shall lie only from final judgments in actions, suits, causes, matters and other judicial proceedings originally instituted in the Superior Court of the Province of Quebec, or originally instituted in a superior court in any of the Provinces of Canada other than the Province of Quebec."

"Except as provided in this Act:" Appeals in judicial proceedings in Courts of Equity are not confined to final judgments. See paragraph (*e*) section 24, and sub-section 3 of section 26; see also section 30 and notes, as to cases provided for by that section. Except * * "in the Act providing for the appeal:" see Exchequer appeals, Election appeals and appeals under the Winding up Act; (section 25.) Appeals from the Maritime Court are only from "every decision of the court having the force and effect of a definitive sentence or final order." See Maritime Court Act, section 18.

A rule setting aside a judgment obtained against a defendant insolvent, who had neglected to plead his discharge before judgment, as he might have done, and who the court held was estopped from setting it up afterwards to defeat the execution, is a final judgment, from which an appeal will lie. *Wallace* v. *Bossom*, 2 Can. S. C. R. 488. But see *Schrœder* v. *Rooney*, Dig. S. C. D., p. 225, No. 6, in which it was doubted, if an appeal lay from a judgment dealing with an order made by the judge of first instance setting aside a judgment for fraud.

An order made by a court in the exercise of the summary jurisdiction which a superior court has over its immediate officers, on an application by a third party to the court to compel a prothonotary to pay over interest received by him, is an order from which an appeal will lie. *Wilkins* v. *Geddes*, 3 Can. S. C. R. 203.

An order making absolute a rule *nisi* obtained by respondent to confirm his rank and precedence as Queen's Counsel, was held an order from which an appeal would lie. *Lenoir* v. *Ritchie*, 3 Can. S. C. R. 575.

In an action instituted in the Superior Court of the Province of Quebec against ten defendants, the declaration claimed an administration of certain property and demanded a *partage* of all the real estate described in the declaration in which the plaintiff claimed an undivided share.

Three of the defendants demurred, except as to two lots of lands in which they acknowledged the defendant had an undivided share. The Superior Court sustained the demurrers and the judgment was affirmed by the Court of Queen's Bench for Lower Canada (appeal side). *Held*, that the judgment of the Court of Queen's Bench finally determined and put an end to the appeal, which was a judicial proceeding within the meaning of section 9, of the Supreme and Exchequer Courts Act, 1876, s-s. 2, and was a final judgment from which an appeal would lie.

"The result is, that though an appeal cannot be taken from a court of first instance directly to this court until there is a final judgment, yet whenever a Provincial Court of Appeal has jurisdiction, this court can entertain an appeal from its judgment finally disposing of the appeal, the case being in other respects a proper subject of appeal." *Per* Strong J., delivering the judgment of the court. *Chevallier* v. *Cuvillier*, 4 Can. S. C. R. 605.

This case was followed in *Shields* v. *Peak*, 8 Can. S. C. R. 579, and a judgment on a demurrer to part of the action was held appealable.

Where a judgment of the Court of Appeal (P. Q.) declared plaintiff entitled to a balance on a building contract, but remitted the case to the Superior Court to enable experts to decide what amount should be deducted for defective work, *Held*, that this judgment was a final judgment from which an appeal would lie; and that although on an appeal from a final judgment an appellant may have the right to impugn an interlocutory judgment rendered in the cause, yet he loses this right if he voluntarily and without reserve acts upon such interlocutory judgment. *Shaw* v. *St. Louis*, 8 Can. S. C. R. 387.

Where a capias had issued under Art. 798, of the C. C. P. (P. Q.) and the prisoner petitioned to be discharged under Art. 819, C. C. P., which petition was dismissed after issue joined on the pleadings under Art. 820, C. C. P., and the judgment of dismissal affirmed by the court of Queen's Bench for Lower Canada, *Held*, that the judgment was a final judgment in a judicial proceeding within the meaning of section 28, Supreme and Exchequer Courts Act, and therefore appealable. *McKinnon* v. *Keroack*, 8 C. L. T. 36.

A judgment on an interpleader issue at the instance of a sheriff under the procedure in Ontario is a final judgment from which an appeal will lie; *Whiting* v. *Hovey*, in the Supreme Court.

But an appeal will not lie from a judgment on a demurrer which does not finally put an end to any part of an action. *Kandick* v. *Morrison*, 2 Can. S. C. R. 12: *Reid* v. *Ramsay*, Dig. S. C. D. p. 238, No. 21: *Bank B. N. A.* v. *Walker*, *Ibid.* p. 244, No. 30: *Roblee* v. *Rankin*, 11 Can. S. C. R. 137: *Hockin* v. *Halifax & Cape Breton R. R. Co.*, Dig. S. C. D. p. 242, No. 28.

Nor will an appeal lie from a judgment or order dealing with a mere matter of procedure. *Gladwin* v. *Cummings*, Dig. S. C. D. p. 246, No. 32: *Dawson* v. *Union Bank*, *Ibid.* p. 247, No. 35.

Nor from a judgment or order for the purpose of deciding a mere question of costs. *Fraser* v. *Tupper*, Dig. S. C. D. p. 240, No. 24.

And in an appeal from Quebec an order dissolving an interim injunction was held not a final judgment from which an appeal would lie. *Stanton* v. *Canada Atlantic Ry. Co.*, Dig. S. C. D. p. 249, No. 37.

For English cases as to distinction between final and interlocutory judgments. see Annual Practice 1887-8, pp. 712 & 713; also Wilson's Judicature Acts, 6th edition, p. 445; also *in re Riddell, ex parte Earl of Strathmore*, 4 Times L. R. 329, 36 W. R. 532. See also Maclennan's Judicature Act, 2nd edition, p. 54.

Further jurisdiction — Criminal cases — Exchequer court—Maritime Court, Ont.—Election cases—Insolvency.

25. The court shall also have jurisdiction,—

(*a*) In appeals in criminal cases as hereinafter provided;

(*b*) In appeals from the Exchequer Court;

(*c*) In appeals from the Maritime Court of Ontario as provided in "*The Maritime Court Act*;"

(*d*) In appeals from the court or judge as provided in "*The Dominion Elections Act*;" and—

(*e*) In appeals from the court or judge as provided in "*The Winding-up Act*."

1. Criminal appeals are now regulated by chapter 50 of 50-51 V. See p. 72.

2. Exchequer appeals are regulated by sections 51 to 53 both inclusive of 50-51 V., c. 16. See p. 77.

3. Maritime appeals are regulated by the Maritime Court Act, R. S. C. c. 137, ss. 18 & 19. See p. 80.

4. Election appeals. Paragraph (*d*) is an error. It should have read "as provided in the Dominion Controverted Elections Act." See sections 50, 51 & 54 of that Act, at p. 82.

5. Appeals under "The Winding-up Act," R. S. C. c. 129, ss. 74, 75 & 76. See p. 91.

All these appeals are dealt with in Part II. of the present volume, for the sake of convenience; but it must be borne in mind that the general provisions of the Supreme and Exchequer Courts Act apply to such appeals, unless the special Act relating to any particular class of appeals otherwise provides, or its provisions are inconsistent with such application.

Appeal to be from court of last resort.

26. Except as otherwise provided in this Act, or in the Act providing for the appeal, no appeal shall lie to the Supreme Court but from the highest court of last resort having jurisdiction in the Province in which the action, suit, cause, matter or other judicial proceeding was originally instituted, whether the judgment or decision in such action, suit, cause, matter or other judicial proceeding was or was not a proper subject of appeal to such highest court of last resort:

Appeal by consent.

2. Provided, that an appeal shall lie directly to the Supreme Court from the judgment of the court of original jurisdiction, by consent of parties:

Appeal per saltum by leave of court or judge.

3. Provided also, that an appeal shall lie to the Supreme Court by leave of such court, or a judge thereof, from any judgment, decree, decretal order, or order made or pronounced by a superior court of equity, or made or pronounced by any judge in equity, or by any superior court in any action, cause, matter or other judicial proceeding in the nature of a suit or proceeding in equity, and from the final judgment of any superior court of any Province other than the Province of Quebec, in any action, suit, cause, matter or other judicial proceeding originally commenced in such superior court, without any intermediate appeal being had to any intermediate court of appeal in the Pro-

vince. 38 V., c. 11, s. 11, *part, and* s. 27; 42 V., c. 39, ss. 5, 6 & 7.

The provisos in this section contain exceptions to the general rule laid down by the Act that appeals must come from the highest court of last resort.

With respect to appeals provided for by special Act, criminal appeals come from the court of last resort having jurisdiction in such matters, election appeals from the trial judge, exchequer appeals direct from the Exchequer Court and maritime appeals direct from the Maritime Court.

The proviso in paragraph 2, does not apply to appeals from the Province of Quebec; see section 29. And by its terms paragraph 3, is inapplicable to such appeals.

With regard to appeals under paragraph 3, of the section, special circumstances should be shown to induce the Supreme Court or judge thereof to grant such leave.

In *Schultz* v. *Wood* from Manitoba, 6 Can. S. C. R. 585, an appeal was allowed from the judgment of the judge who heard the cause without any appeal to the full court, it being shown that there were then only two judges on the bench in Manitoba, the chief justice, who was plaintiff in the cause, and the judge from whose decree the appeal was brought.

In *Bank of B. N. A.* v. *Walker*, Dig. S. C. D. p. 382, No. 8, an appeal direct was allowed under the circumstances of that case.

But in *Sewell* v. *British Columbia Towing Co.*, Dig. S. C. D. p. 381, No. 7, the circumstances disclosed were not considered sufficient to justify an appeal direct.

In *Moffatt* v. *The Merchants Bank* 11 Can. S. C. R. 46; Dig. S. C. D. p. 382, No. 9, leave to appeal direct was given on the ground that the Court of Appeal for Ontario would be bound by a decision in a similar case, the effect of which the appellant sought to avoid. See *Canada Company* v. *Kyle*, *infra*.

In *Langtry* v. *Dumoulin*, Dig. S. C. D. p. 382, No. 10, leave to appeal direct was allowed, although the Court of Appeal had refused permission to appeal to that court. The suit was one brought against D. as rector of St. James Cathedral, Toronto, with respect to certain lands. The church-wardens, upon judgment being given against D. by the Chancery Division of the High Court of Justice, applied to the Court of Appeal for Ontario for leave to appeal to that court, D. refusing to allow his name to be used for the purpose. This application was refused, the court holding that the church-wardens had no interest in the lands or revenues.

In a case which came by consent to the Supreme Court from the court of original jurisdiction, the judge in equity of New Brunswick, the judgment of the Supreme Court was reversed by the Judicial Committee, whose judgment was made an order of the Supreme Court and certified to the court below. The judge in equity having subsequently for the purpose of carrying out the judgment so certified to the court below, made an order which the appellant alleged to be erroneous, he was allowed under the circumstances to appeal direct without going to the full court in New Brunswick. *Lewin* v. *Howe*, not yet reported.

In a case not yet reported, of *The Canada Company* v. *Kyle*, from Ontario, decided 21st March, 1887, it was sought to appeal directly from the judgment on further consideration of the trial judge, there having been no intermediate appeal either to the Divisional Court or the Provincial Court of Appeal. It was held, by Strong, J., 1. That section 6, of the Supreme Court Amendment Act of 1879, authorized an order being made in any proper case, as well when the proceeding in the court below was an action at law as where it was a suit in equity. 2. That the section applied to a case where it was sought to appeal directly from the judgment of the judge who tried the case (without a jury) no recourse having been had to the jurisdiction of the Divisional Court of Ontario, under the practice prevailing in Ontario, the judgment of the judge at the trial being in effect the judgment of the Divisional Court, and an appeal directly from a judgment such as the one in question to the Court of Appeal of Ontario, being according to the general course of practice. But 3. That the foundation of an application under section 6, must be some reasonable ground of appeal, and it was not a sufficient reason for allowing an appeal directly to the Supreme Court, that the Court of Appeal for Ontario had already decided the abstract point of law in dispute, and the proposed appellant asserted that that court would adhere to its previous decision, although subsequent cases in England had since decided the point otherwise. In *Moffatt* v. *The Merchants Bank*, *supra*, leave to appeal direct was given, because the Court of Appeal had not only decided the same legal question which the appellant sought to raise, but had decided it upon the same actual state of facts and virtually upon the same evidence oral and documentary.

No appeal from orders made in exercise of judicial discretion—Exception.

27. No appeal shall lie from any order made in any action, suit, cause, matter or other judicial proceeding made in the exercise of the judicial discretion of the court or judge making the same; but this exception shall not include

decrees and decretal orders in actions, suits, causes, matters or other judicial proceedings in equity, or in actions or suits, causes, matters or other judicial proceedings in the nature of suits or proceedings in equity instituted in any superior court. 42 V., c. 39, s. 2.

But see section 30; and section 61, as to rules for new trials.

Appeals from final judgments in cases specified.

28. Except as provided in this Act or in the Act providing for the appeal, an appeal shall lie only from final judgments in actions, suits, causes, matters and other judicial proceedings originally instituted in the Superior Court of the Province of Quebec, or originally instituted in a superior court in any of the Provinces of Canada other than the Province of Quebec. 42 V., c. 39, s. 3.

See section 24 and notes.

APPEALS FROM THE PROVINCE OF QUEBEC.

In what cases appeal shall lie in Quebec.

29. No appeal shall lie under this Act from any judgment rendered in the Province of Quebec in any action, suit, cause, matter or other judicial proceeding, wherein the matter in controversy does not amount to the sum or value of two thousand dollars, unless such matter, if less than that amount,—

Validity of Act or ordinance.

(*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—

Fees to the Crown, title to property, etc.

(*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 or tenements, annual rents or such like matters or things where the rights in future might be bound :

To be only from court of Queen's Bench.

2. Provided that such appeals shall lie only from the Court of Queen's Bench. 38 V., c. 11, s. 17, *part*; 42 V., c. 39, s. 8.

No appeal shall lie when the "matter in controversy does not amount to the sum or value of two thousand dollars."

But an exception to this is made by section 74 of the Act in the class of cases mentioned in sections 72 & 73, which provide for certain controversies between the Dominion of Canada and any province, or between provinces, and for determining cases in which the validity of an Act of the Parliament of Canada or of the Legislature of the province may be called in question. Section 74 provides that these sections shall apply "whatever is the matter in dispute."

In *Joyce* v. *Hart*, 1 Can. S. C. R. 321, it was held, that in determining the sum or value in dispute in cases of appeal by a defendant the proper course was to look at the amount for which the declaration concludes, and not at the amount of the judgment.

In *Levi* v. *Reed*, 6 Can. S. C. R. 482, the plaintiff obtained in the Superior Court for Lower Canada a judgment for $1,000 damages. The defendant thereupon appealed to the Court of Queen's Bench and on such appeal the plaintiff did not seek by way of cross appeal for an increase of damages, but contended that the judgment for $1,000 should be confirmed. The Court of Queen's Bench reduced the damages to $500. The plaintiff then appealed to the Supreme Court of Canada. In this case also the court held that for determining the matter in controversy the amount for which the declaration concluded, should be looked at, and the ruling in *Joyce* v. *Hart* was affirmed and approved.

This rule has always been acted upon by the Supreme Court.

In *Ayotte* v. *Boucher*, 9 Can. S. C. R. 460, it was held, that although the amount claimed by the declaration was made to exceed $2,000 by including interest which had been barred by prescription, the appeal would lie.

In *McCorkill* v. *Knight*, Dig. S. C. D. p. 402, No. 95, the appellant was allowed to show by affidavit that the matter in dispute was over $2,000.

In *Champoux* v. *Lapierre*, Dig. S. C. D. p. 244, No. 31, it was held, that when an opposition was filed to a seizure under a judgment for less than $2,000, the question of jurisdiction was governed by the amount of the

judgment and not by the value of the property seized, although such value exceeded $2,000.

See also *Bourget* v. *Blanchard*, Dig. S. C. D. p. 241, No. 27: *Gendron* v. *McDougall*, *Ibid.* p. 248, No. 36.

When the only question involved was the personal obligation of the respondent in a hypothecary action to pay a sum of $165.82, for a church rate imposed on an immovable by the levy of a fixed sum, the payment of which was to be made by two annual instalments, it was held, that the value of the immovable could not affect the right of appeal and that the appeal would not lie. *Bank of Toronto* v. *LeCuré et les Marguilliers, etc., de la Paroisse de la Nativité*, Dig. S. C. D. p. 250, No. 40.

The words "where rights in future might be bound" should be read as qualifying all the words in this sub-section. If for instance a fee of office is claimed, but the right to it is denied by the defendant, the case is appealable. But if in an action for a fee of office the defendant pleads payment, the case is not appealable if under $2,000. S. C., *per* Taschereau, J.

An appeal was refused in a case similar to one of contract for payment of a sum by certain instalments to an amount of $170.20 in all, as not coming within the words "rights in future" as used in the Act. *Per* Gwynne, J., in *Beaubien* v. *Bernatchez*, Dig. S. C. D. p. 252, No. 41

In an action brought against the collector of customs at Montreal to recover the sum of $222.80, the difference of duty between 20 and 30 per cent. *ad valorem* on the value of certain importations, *Held*, that the case came within the statute and was appealable, although it was contended that by a recent Act it was declared that for the future, goods of the kind should be subject to a duty of 30 per cent. and that therefore appellant's rights could not be affected, *Darling* v. *Ryan*, Dig. S. C. D. p. 254, No. 44.

In this case the court was of opinion that the vested right of appeal in the plaintiff was not taken away by the Act changing the rate of duty.

In *Wheeler* v. *Black*, 2 M. L. R., Q. B., 159, it was held, *per* Cross, J., that a question of servitude is a question involving future rights within the meaning of the Act. The appeal was entertained and disposed of by the Supreme Court.

By a *procès-verbal* made by a Municipal Council, one R. was ordered to improve a portion of road fronting his land. On his refusal to do the work, the council had it performed at a cost of $200, for which amount they sued R. *Held*, *per* Fournier, Henry and Gwynne, JJ., (Strong and Taschereau, JJ., dissenting, and Ritchie, C.J., expressing no opinion on the point), that the charge or servitude imposed on R. was in its nature permanent, and had necessarily the effect of affecting the future rights of R.

in the free enjoyment of his property and the case was therefore appealable. *Reburn* v. *La Corporation de la Paroisse de Ste. Anne du Bout de L'Isle.* (Not yet reported.)

Where the plaintiff by the conclusion of his declaration sought to recover back from the defendants, a building society, a sum of $810, part of a sum considerably over $2,000 paid by a plaintiff under protest to obtain a release of certain mortgages, *Held*, by Tessier, J., that no appeal would lie, although to settle the contention between the parties it might be necessary to consider their respective rights under the mortgages which were originally given for a large sum. Mr. Justice Tessier having reserved to the defendants their right to apply to the Supreme Court for leave, the application was renewed before the Registrar and refused, and on appeal to Henry, J., the decision of the Registrar was affirmed. *Ouimet* v. *La Societé de Construction Permanente des Artisans.*

Appeals from the Province of Quebec lie only from the Court of Queen's Bench. They cannot come from the court of original jurisdiction, even by consent, nor can they come from the Court of Review. *Danjou* v. *Marquis*, 3 Can. S. C. R. 251, a case of mandamus: *Macdonald* v. *Abbott*, 3 Can. S. C. R. 278.

The Legislature of the Province of Ontario, by section 43 of the Ontario Judicature Act, enacted the following limitation on the right of appeal to the Supreme Court of Canada:

"43. No appeal shall lie to the Supreme Court of Canada without the special leave of such court, or of the Court of Appeal, unless the title to real estate, or some interest therein, or the validity of a patent is affected, or unless the matter in controversy on the appeal exceeds the sum or value of $1,000, exclusive of costs, or unless the matter in question relates to the taking of an annual or other rent, customary, or other duty, or fee, or a like demand of a general or public nature affecting future rights."

This section has been re-enacted by chapter 42 of the R. S. O., 1887, section 2, with the addition at the beginning of the section of the words following: "In any action respecting property or civil rights, whether for damages or for specific relief." (See Appendix.)

In *Forristal* v. *McDonald*, Dig. S. C. D. p. 241, No. 25, the Supreme Court of Canada intimated that it considered this section unconstitutional and *ultra vires* of the Ontario Legislature, and an appeal was allowed although the matter in controversy was less than $1,000 and leave to appeal had been refused by the Court of Appeal for Ontario. Several appeals have since then been allowed as a matter of right and heard by the Supreme Court, notwithstanding the objection that the cases were not appealable under this section.

Certain matters excepted.

30. Nothing in the three sections next preceding shall in any way affect appeals in Exchequer cases, cases of rules for new trials and cases of *mandamus*, *habeas corpus* and municipal by-laws. 42 V., c. 39, s. 11.

In Exchequer cases, cases of *mandamus*, *habeas corpus* and municipal by-laws, judgments not final may be appealed from, and in this respect this section creates an exception to the general rule that only final judgments can be appealed from. It is not intended to create any exception to the general rule that appeals must come from the highest court of final resort.—See *Danjou* v. *Marquis*, 3 Can. S. C. R. 251.

See section 24, paragraph (*g*), Supreme and Exchequer Courts Act.

As to cases of rules for new trials, see section 24, paragraph (*d*) and section 61, Supreme and Exchequer Courts Act.

HABEAS CORPUS APPEALS.

Extradition.

31. No appeal shall be allowed in any case of proceedings for or upon a writ of *habeas corpus* arising out of any claim for extradition made under any treaty. 39 V., c. 26, s. 31, *part*.

HABEAS CORPUS.

Concurrent jurisdiction in habeas corpus matters.

32. Every judge of the court shall have concurrent jurisdiction with the courts or judges of the several Provinces, to issue the writ of *habeas corpus ad subjiciendum*, for the purpose of an inquiry into the cause of commitment in any criminal case under any Act of the Parliament of Canada, but such judge shall not have such jurisdiction in *habeas corpus* matters arising out of any claim for extradition made under any treaty:

Appeal to the court.

2. If the judge refuses the writ or remands the prisoner, an appeal shall lie to the court. 38 V., c. 11, s. 51; 39 V., c. 26, s. 31, *part*.

Powers of the court in such cases.

33. In any *habeas corpus* matter before a judge of the Supreme Court, or on any appeal to the Supreme Court in any *habeas corpus* matter, the court or judge shall have the same power to bail, discharge or commit the prisoner or person, or to direct him to be detained in custody or otherwise to deal with him as any court, judge or justice of the peace having jurisdiction in any such matters in any Province of Canada. 39 V., c. 26, s. 29.

Prisoner need not be present in court.

34. On any appeal to the Supreme Court in any *habeas corpus* matter, it shall not be necessary, unless the court otherwise orders, for any prisoner or person on whose behalf such appeal is made, to be present in court; but the prisoner or person shall remain in the charge or custody to which he was committed or had been remanded, or in which he was at the time of giving the notice of appeal, unless at liberty on bail, by order of a judge of the court which refused the application, or of a judge of the Supreme Court; but the Supreme Court may, by writ or order, direct that such prisoner or person shall be brought before it. 39 V., c. 26, s. 30.

When such appeals shall be heard.

35. An appeal to the Supreme Court in any *habeas corpus* matter shall be heard at an early day, whether in or out of the prescribed sessions of the court. 39 V., c. 26, s. 28.

APPEALS IN MATTERS OF HABEAS CORPUS NOT ARISING OUT OF A CRIMINAL CHARGE.

The jurisdiction in matters of *habeas corpus* not arising out of a criminal charge is given by section 24, paragraph (*g*), Supreme and Exchequer Courts Act.

An appeal will not lie when at the time of bringing it the appellant is at large. *Fraser* v. *Tupper*, Dig. S. C. D. p. 240, No. 24.

Costs are not given, as a general rule, in *habeas corpus* matters, *in favorem libertatis*. *In re Johnson*, Dig. S. C. D. p. 386, No. 31, and p. 540, No. 4.

But when the appeal had been brought, after the appellant was at large, and for the purpose of trying the question of costs, it was dismissed with costs. *Fraser* v. *Tupper*, Dig. S. C. D. p. 240, No. 24.

APPEALS IN MATTERS OF HABEAS CORPUS ARISING OUT OF A CRIMINAL CHARGE.

1. The court has neither original nor appellate jurisdiction in *habeas corpus* matters arising out of any claim for extradition made under any treaty. (Sections 31 & 32.)

2. Every judge of the court is given concurrent jurisdiction with the courts or judges of the several provinces to issue the writ of *habeas corpus ad subjiciendum* for the purpose of an inquiry into the cause of commitment in any criminal case under any Act of the Parliament of Canada.

3. An appeal lies to the full court, if the judge refuses the writ or remands the prisoner.

Section 33 gives the court or judge, in dealing with the prisoner or person, the same powers as any court, judge or justice of the peace having jurisdiction in any such matters in any province of Canada.

Section 34 provides, that on any appeal the prisoner or person need not be present in court, unless the court otherwise orders.

And section 35 provides, that an appeal to the Supreme Court in any *habeas corpus* matter shall be heard at an early day whether in or out of the prescribed sessions of the court.

Sections 33, 34 and 35, apply to all *habeas corpus* matters.

No security for costs is required in proceedings for or upon a writ of *habeas corpus*. See section 46, sub-section 2.

In *habeas corpus* matters, other than those not arising out of a criminal charge, there is no appeal except from the judge of the Supreme Court. *In re Boucher*, Dig. S. C. D. p. 180, No. 2.

And a judge of the Supreme Court will not assume appellate jurisdiction by issuing a writ of *habeas corpus* in a matter which has been disposed of on appeal to the Appellate Court of the Province.—S. C.

Nor where a conviction has been regular and made by a court in the unquestionable exercise of its authority and acting within its jurisdiction, the only objection being that the magistrate erred on the facts and

that the evidence did not justify the conclusion which he arrived at as to the guilt of the prisoner, will the Supreme Court or a judge thereof, go behind the conviction and enquire into the merits of the case by the use of a writ of *habeas corpus*, and thus act as a Court of Appeal from the magistrate's decision. *In re Trepannier*, Dig. S. C. D. p. 182, No. 3; 12 Can. S. C. R. 111.

Although the judge may grant the writ and discharge the prisoner, the court, notwithstanding sub-section 2 of section 32, may still exercise the jurisdiction inherent in every Superior Court, of enquiring into and judging of the regularity or abuse of its process, and if necessary of setting aside a writ improvidently issued. *In re Sproule*, 12 Can. S. C. R. 140. And an application to the court to quash a writ of *habeas corpus* as improvidently issued, may be entertained in the absence of the prisoner.—S. C.

After a conviction for a felony by a court having general jurisdiction over the offence charged, a writ of *habeas corpus* is an inappropriate remedy.—S. C.

The right to issue a writ of *habeas corpus* being limited to, "an inquiry into the cause of commitment in any criminal case under any Act of the Parliament of Canada," such writ cannot be issued in a case of murder, which is a case at common law.—S. C.

Rule 14 provides for the convening of the court for the purpose of disposing of *habeas corpus* matters. The other rules specially applicable are 46, 47, 48 and 49, which see.

CERTIORARI.

Writ of Certiorari.

36. A writ of *certiorari* may, by order of the court or a judge thereof, issue out of the Supreme Court, to bring up any papers or other proceedings had or taken before any court, judge or justice of the peace and which are considered necessary with a view to any inquiry, appeal or other proceeding had or to be had before the court. 39 V., c. 26, s. 34.

This section provides for the issue of a writ of certiorari, by order of the court or a judge. But it must be considered necessary with a view to any inquiry, appeal or other proceeding had or to be had before the court. Therefore, a judge cannot order the issue of such a writ in any proceeding before him in a *habeas corpus* matter. Nor does the section

authorize the court to issue a writ of certiorari in such proceedings. To do so would be to assume appellate jurisdiction over the inferior court. *In re Trepannier*, Dig. S. C. D. p. 182, No. 3.

SPECIAL CASES REFERRED TO THE COURT.

Governor may refer matter for opinion.

37. The Governor in Council may refer to the Supreme Court, for hearing or consideration, any matter which he thinks fit to refer; and the court shall thereupon hear or consider the same and certify their opinion thereon to the Governor in Council: Provided, that any judge or judges of the court who differ from the opinion of the majority, may, in like manner, certify his or their opinion or opinions to the Governor in Council. 38 V., c. 11, s. 52.

The following cases were referred to the court under the corresponding section of 38 V., c. 11: *In re Canada Temperance Act '78 and County of Perth*, Dig. S. C. D. p. 51, No. 3: *In re Canada Temperance Act '78 and County of Kent*, Dig. S. C. D. p. 51, No. 4: "*The Thrasher Case*," Dig. S. C. D. p. 266, No. 12.

The question of the validity of the Liquor License Act 1883 and Amending Act was not submitted under this section, but under section 26 of 47 V., c. 32.

In certifying their opinion the judges do not give any reasons, following in this respect the practice of the Judicial Committee when dealing with cases referred by the Crown for advice. See Macpherson, 149.

Report upon Private Bill or Petition.

38. The Supreme Court, or any two of the judges thereof, shall examine and report upon any private bill or petition for a private bill presented to the Senate or House of Commons, and referred to the court under any rules or orders made by the Senate or House of Commons. 38 V., c. 11, s. 53.

PROCEDURE IN APPEALS.

PERFECTING APPEALS.

Proceedings in Appeals.

39. Proceedings in appeals shall, when not otherwise provided for by this Act, or by the Act providing for the appeal, or by the general rules and orders of the Supreme Court, be as nearly as possible in conformity with the present practice of the Judicial Committee of Her Majesty's Privy Council. 38 V., c. 11, s. 24.

The practice of the Judicial Committee will be found in Macpherson's Practice of the Privy Council and Lattey's Privy Council Practice. See notes to section 53 for practice of the Judicial Committee on applications to dismiss for want of prosecution.

When appeal shall be brought.

[**40.** Except as otherwise provided, every appeal shall be brought within sixty days from the signing or entry or pronouncing of the judgment appealed from.]

This section has been substituted by 50-51 V., c. 16, sch. A, for section 40 as it stood in chapter 135 of the Revised Statutes, which limited the time to thirty days.

Cases otherwise provided for, are:

(*a*) Criminal appeals. See 50-51 V., c. 50, s. 1.

(*b*) Exchequer Court appeals. See 50-51 V., c. 16, s. 51.

(*c*) Election appeals. See Dominion Controverted Elections Act, section 51.

(*d*) Appeals under the Winding-up Act from the District of Keewatin. See section 74, sub-sections 2 & 3 of chapter 129, R. S. C.

This section 40 has taken the place of the provision of the original Supreme and Exchequer Courts Act of 1875, section 25, that every appeal, other than an Election appeal, "shall be brought within thirty days from the signing, entry or pronouncing of the judgment appealed from." In

1879, the section was passed giving an appeal to the Supreme Court, by leave of the court or a judge, from the court of original jurisdiction without an intermediate appeal to the Appellate Court of the Province (excepting the Province of Quebec). Section 6 of the Supreme Court Amendment Act of 1879, similar to sub-section 3 of section 26 of chapter 135, R. S. C.

Under section 6 of the Act of 1879, the Supreme Court held, that an appeal might be allowed by that court, although the judgment appealed from had been pronounced, entered or signed more than thirty days before the date of the application. *Bank of B. N. A.* v. *Walker*, Dig. S. C. D. p. 381, No. 5.

But the revised statute does not seem open to this construction. The jurisdiction is given by the sections preceding section 40, and that section says, "*every appeal* should be brought within sixty days;" "except as otherwise provided," are the only words of qualification. Again, in the original Act of 1875, appeals direct by consent were clearly governed by the provision as to time; and such appeals are provided for in the revised statute by the same section (26), although by a different sub-section (2), as appeals *per saltum*.

In appeals from the Province of Quebec the time runs in every case from the pronouncing of the judgment.

In other appeals, where any substantial matter remains to be determined before the judgment can be entered, the time for appealing runs from the entry of the judgment. Where nothing remains to be settled, as for instance in the case of the simple dismissal of a bill, or where no judgment requires to be entered, the time for appealing runs from the pronouncing of the judgment. *O'Sullivan* v. *Harty*, 13 Can. S. C. R. 431: *Walmsley* v. *Griffith*, 13 Can. S. C. R. 434: *Martley* v. *Carson*, 13 Can. S. C. R. 439: *Winnipeg* v. *Wright*, 13 Can S. C. R. 441.

Notice of appeal in cases specified.

41. No appeal upon a special case, or from the judgment upon a motion to enter a verdict or non-suit upon a point reserved at the trial, or from the judgment upon a motion for a new trial, upon the ground that the judge has not ruled according to law, shall be allowed, unless notice thereof is given in writing to the opposite party, or his attorney of record, within twenty days after the decision complained of, or within such further time as the court appealed from, or a judge thereof, allows. 38 V., c. 11, s. 21.

The cases referred to are those specified by paragraphs (*b*), (*c*) and (*d*) of section 24. "Within 20 days after the decision complained of" would exclude the day upon which the decision is rendered and include the last of the 20 days, unless the last of such days should happen to fall on a holiday. See rule 72 and notes.

There are other cases in which notice of appeal has to be given:

(*a*) Criminal appeals—Notice of appeal has to be served on Attorney-General for the proper Province within 15 days after affirmance of conviction. 50-51 V., c. 50, s. 1. See Criminal Appeals.

(*b*) In exchequer appeals, notice of the setting down of the appeal must be given within 10 days. 50-51 V., c. 16, s. 51.

If the appeal is on behalf of the Crown a preliminary notice takes the place of a deposit under the Act. Section 53. See Exchequer Appeals.

(*c*) Appeals from the Maritime Court of Ontario—In these, by rule 269 of the court, notice of intention to appeal must be given within 15 days from the time of pronouncing of the decision appealed from. See Maritime Court Appeals.

(*d*) Election appeals—Notice of setting down an appeal for hearing must be given within three days. Dominion Controverted Elections Act section 51, sub-section 3. See Election Appeals.

The Supreme Court or a judge thereof has no power to extend the time for giving notice of appeal, but only "the court appealed from or a judge thereof."

The giving of the notice is a condition precedent which must be shewn to have been complied with before the appeal could be allowed, but when the notice has been given, either within the twenty days or within the extended time fixed by a judge under this section, the appellant would have the sixty days from the entry or pronouncing of the judgment to bring his appeal, or be in a position to apply after the sixty days under section 42, under special circumstances.

Allowance of appeal in special cases on terms.

42. Provided always, that the court proposed to be appealed from, or any judge thereof, may, under special circumstances, allow an appeal, notwithstanding that the same is not brought within the time hereinbefore prescribed in that behalf; but in such case, the court or judge shall

impose such terms as to security or otherwise as seems proper under the circumstances; but the provisions of this section shall not apply to any appeal in the case of an election petition. 38 V., c. 11, s. 26.

Approving of the security is a mode of allowing the appeal. *Fraser* v. *Abbott*, Dig. S. C. D. p. 403, No. 100: *The Queen* v. *Taylor*, 1 Can. S. C. R. 65: *Walmsley* v. *Griffith*, Dig. S. C. D. p. 404, No. 104.

When a judge of the court below has made an order allowing the security he is *functus officio*, and the appeal is then subject to the jurisdiction of the Supreme Court. Orders made in the cause by the court below after the allowance of the security will be disregarded by the Supreme Court. *Lakin* v. *Nuttall*, 3 Can. S. C. R. 691: *Walmsley* v. *Griffith*, Dig. S. C. D. p. 404, No. 104: *Starrs* v. *Cosgrave Brewing and Malting Co.*, *Ibid.* p. 405, No. 105.

All appeals from the court or judge under "The Winding-up Act" must be allowed by a judge of the Supreme Court of Canada, while the security has to be given in some of these appeals (those from the District of Keewatin) according to the practice of the court below, the words "the court" in line 9 of sub-section 4 of section 74 of that Act referring, apparently, to the court below. But in appeals provided for by section 76, the security may be given under section 46 of the Supreme and Exchequer Courts Act to the satisfaction either of the court below or a judge thereof, or of the Supreme Court or a judge thereof.

The power of allowing an appeal under special circumstances is given by this section 42 only to the court below or a judge thereof. Therefore if an application be made to the Supreme Court or a judge thereof under section 46, it should be made within the sixty days given by section 40 *Walmsley* v. *Griffith*, Dig. S. C. D. p. 407, No. 109.

The Court of Appeal for Ontario has held that no appeal lies to that court from a judgment of a judge of that court extending the time for appealing. *Neill* v. *Travellers' Ins. Co.*, 9 Ont. App. R. 54.

There would seem to be no power in either court to extend the time for bringing an appeal under "the Dominion Controverted Elections Act."

As to what are "special circumstances" within the meaning of this section, see authorities cited on page 744 of the Annual Practice, 1887-8, and in Wilson's Judicature Acts, 6th edition, page 446. Most of the cases will also be found in Maclennan's Judicature Act, 2nd edition, pages 696-698, notes to Order 2 of the Court of Appeal of Ontario. See also

Langdon v. *Robertson*, 12 Ont. P. R. 139, approving of *Sievewright* v. *Leys*, 9 Ont. P. R. 200: *re Gabourie, Casey* v. *Gabourie*, 12 Ont. P. R. 252: *Platt* v. *Grand Trunk Railway Co.*, 12 Ont. P. R. 380.

No uniform rule can be deduced from the cases, but if any rule can be laid down it seems to be, that to do justice in the particular case is above all other considerations, as was said in *re Gabourie, supra*. In *re Manchester Economic Building Society*, 24 Chy. D., in which application for special leave to appeal was made after the expiration of the time fixed, Brett, M.R., says: "I know of no rule other than this, that the court has power to give the special leave, and exercising its judicial discretion, is bound to give the special leave, if justice requires that that leave should be given."

Proceedings requisite to bring cases into Supreme Court—When error is alleged.

43. No writ shall be required or issued for bringing any appeal in any case to or into the Supreme Court, but it shall be sufficient that the party desiring so to appeal shall, within the time herein limited in the case. have given the security required and obtained the allowance of the appeal:

2. Whenever error in law is alleged, the proceedings in the Supreme Court shall be in the form of an appeal. 38 V., c. 11, ss. 16 *and* 28.

See notes to preceding section.

But notice of appeal must be given in certain cases. See section 41 and notes.

The proceedings subsequent to the allowance of the security are governed by the Supreme Court Rules, when not provided for specially by the Act.

Appeal to be on a special case.

44. The appeal shall be upon a case to be stated by the parties or, in the event of difference, to be settled by the court appealed from, or a judge thereof; and the case shall set forth the judgment objected to and so much of the pleadings, evidence, affidavits and documents as is neces-

sary to raise the question for the decision of the court. 38 V., c. 11, s. 29.

Rule 1 of the Supreme Court says the first proceeding in appeal in the Supreme Court shall be the filing of a case pursuant to this section. The case must be certified under the seal of the court appealed from.

The case cannot be filed unless it contains the formal judgment of the court appealed from. *Reid* v. *Ramsay*, Dig. S. C. D. p. 238, No. 21: *Kearney* v. *Kean*, *Ibid.* p. 383, No. 11: *Wallace* v. *Souther*, *Ibid.* p. 383, No. 12.

In one case from British Columbia it was ordered that the registrar should be at liberty to file the case as received without the formal order, the appellant within six weeks to attach the formal order to the case and copies. *Bank of B. N. A.* v. *Walker*, Dig. S. C. D. p. 383, No. 14.

It ought also to contain the formal judgment order or decree of the court of original jurisdiction. *Wright* v. *Huron*, Dig. S. C. D. p. 384, No. 17.

And Rule 2 provides that in addition to the proceedings mentioned in the section, the case shall invariably contain a transcript of all the opinions or reasons for their judgment delivered by the judges of the court or courts below, or an affidavit that such reasons cannot be procured, with a statement of the efforts made to procure the same.

By Rule 3 it is required that the case shall also contain a copy of any order which may have been made by the court below or any judge thereof enlarging the time for appealing.

Rule 4 provides for the remitting of the case to the court below, in order that it may be made more complete by the addition thereto of further matter. See notes to sections 63, 64 & 65.

The Registrar will not tax the costs of printing any immaterial documents which an appellant inserts in a case, or allows to be inserted without protest. The appellant should apply to a judge of the Supreme Court in Chambers for an order to dispense with unnecessary printing.

The case should be filed within one month after the security required by the Act shall have been allowed, otherwise the respondent may move to dismiss, pursuant to section 53 of the Act. (Rule 5).

But the Supreme Court or a judge thereof may extend the time. (Rules 42 & 70).

The case must be accompanied by a certificate under the seal of the court below stating that the appellant has given proper security to the

satisfaction of the court whose judgment is appealed from or of a judge thereof, and setting forth the nature of the security to the amount of $500, as required by the 46th section of the Act, and a copy of any bond or other instrument by which security may have been given must be annexed to the certificate. (Rule 6). See *McDonald* v. *Abbott*, 3 Can. S. C. R. 278.

Rules 7, 8 & 9 provide for the printing of the case and regulate its style, size, number of copies to be printed and deposited, etc.

And Rule 10 provides, that together with the case certified copies of all original documents and exhibits used in evidence in the court of first instance, are to be deposited with the registrar, unless their production be dispensed with by order of a judge of the Supreme Court; and it provides also for the transmission of the originals by order of the Supreme Court or a judge thereof.

In practice this rule is generally complied with by printing as part of the case all the material exhibits; and where this cannot be done without great expense, for instance, where account books, plans, etc., or models or other articles, have been filed, an order to transmit the originals should be applied for.

An application to amend a case should be made to a judge in chambers and not to the court. *Ætna Ins. Co.* v. *Brodie*, Dig. S. C. D. p. 383, No. 15. But no application should be made with respect to the contents of a case, or to dispense with printing any part of it, until it has been settled between the parties, or by a judge of the court below, pursuant to the statute. *Carière* v. *Bender*, Dig. S. C. D. p. 384, No. 19.

These rules as to printing do not apply to election appeals, which are specially regulated by rules 50 to 55 inclusive; nor do they apply to criminal appeals and appeals in matters of *habeas corpus*, which may be heard on a written case. (Rule 47).

Transmission of case by clerk of the court appealed from.

45. The clerk or other proper officer of the court appealed from shall, upon payment to him of the proper fees and the expenses of transmission, transmit the case forthwith after such allowance to the registrar of the Supreme Court, and further proceedings shall thereupon be had according to the practice of that court. 38 V., c. 11, s. 30.

"Forthwith after such allowance" refers to the allowance of the appeal, but by Rule 5 of the Supreme Court the appellant has a month in ordinary cases in which to have his case transmitted.

The word "forthwith" in statutes and rules of court must be construed with reference to the objects of the provision and the circumstances of the case. *Ex parte Lamb*, 19 Ch. D. 169.

The case to be transmitted must be a printed case, and no manuscript record or original documents should be forwarded to the registrar of the Supreme Court (except in election appeals, criminal appeals, or appeals in matters of *habeas corpus*) unless the Supreme Court or a judge thereo otherwise orders. See notes to preceding section.

SECURITY AND STAYING EXECUTION.

Security to be given—Exceptions.

46. No appeal shall be allowed until the appellant has given proper security, to the extent of five hundred dollars, to the satisfaction of the court from whose judgment he is about to appeal, or a judge thereof, or to the satisfaction of the Supreme Court, or a judge thereof, that he will effectually prosecute his appeal and pay such costs and damages as may be awarded against him by the Supreme Court:

2. This section shall not apply to appeals [by or on behalf of the Crown], in election cases, in cases in the Exchequer Court, in criminal cases, or in proceedings for or upon a writ of *habeas corpus*. 38 V., c. 11, s. 31; 42 V., c. 39, s. 14.

This section is taken from section 31 of the Supreme and Exchequer Courts Act of 1875, as amended by section 14 of the Supreme Court Act of 1879, which reads as follows:

"31. No appeal shall be allowed (except only the case of appeal in proceedings for or upon a writ of *habeas corpus*) until the appellant has given proper security to the extent of five hundred dollars to the satisfaction of the court, from whose judgment he is about to appeal, or a judge thereof, or to the satisfaction of the Supreme Court or a judge thereof,

that he will effectually prosecute his appeal and pay such costs and damages as may be awarded *in case the judgment appealed from be affirmed;* Provided that this section shall not apply to appeals in election cases, for which special provision is hereinafter made."

The words in italics have been omitted in the section of the revised statute, which excepts also exchequer and criminal appeals, as well as election and *habeas corpus* appeals. (Sub-section 2).

As to security in election appeals, see section 51 of the Dominion Controverted Elections Act.

The security in exchequer appeals is provided for by sections 51 & 53 of chapter 16 of 50-51 V.

No security for costs is required in criminal appeals, or appeals in matters of *habeas corpus*.

There is no power to dispense with the security required by section 46, or to admit an appeal *in formâ pauperis*. *Fraser* v. *Abbott*, Dig. S. C. D. p. 403, No. 100.

The application to the court below or a judge thereof to have the security allowed must be made within the sixty days limited by section 40, subject to the right to make an application under section 42.

In every appeal the time within which an application may be made to the Supreme Court or a judge thereof, is limited to the sixty days. See *Walmsley* v. *Griffith*, Dig. S. C. D. p. 381, No. 6. Even when the appeal comes direct from the court of original jurisdiction under sub-section 3 of section 26; although when allowing appeals under section 6 of the Supreme Court Amendment Act of 1879, from which sub-section 3 of section 26 is taken, the Supreme Court held it was not bound by the limitation as to time in section 25 of the Supreme and Exchequer Courts Act of 1875. *Bank of B. N. A.* v. *Walker*, Dig. S. C. D. p. 381, No. 5.

It is necessary that when the "case" is transmitted to the Registrar of the Supreme Court, it should be accompanied by a certificate stating that security has been given to the satisfaction of the court below or a judge thereof (when security has been given in that court), and setting forth the nature of the security, and having a copy of any bond executed as security attached to the certificate. (Rule 6.) Without such a certificate the court will not hear the appeal. *McDonald* v. *Abbott*, 3 Can. S. C. R. 278.

The approval of the security is a mode of allowing the appeal, and after such approval has been given and appeal allowed, the court below ceases to have any jurisdiction over the case, except under the provisions relating to the stay of execution (section 47 *et seq.*); and any order thereafter made by the court below will be disregarded by the Supreme Court. *Lakin* v. *Nuttall*, 3 Can. S. C. R. 691: *Walmsley* v. *Griffith*, Dig. S. C. D., p. 404, No. 104: *Starrs* v. *Cosgrave Brewing and Malting Co.*, *Ibid.* p. 405, No. 105.

The Court of Appeal for Ontario has held that no appeal lies to that court from a judgment of a judge of that court extending time for appealing. *Neill* v. *Travellers Ins. Co.*, 9 Ont. App. R. 54.

An application in the Supreme Court to have the security allowed should be made in chambers, and not to the full court, and should be on notice, stating the nature of the security. A copy of the bond should be served with the notice, and the original filed in the Registrar's office.

Where an application had been made to a judge in chambers and refused, the court refused to entertain a similar application. *McNab* v. *Wagler*, Dig. S. C. D. p. 407, No, 108.

The court has no discretion to increase the amount of security on appeal to the Supreme Court of Canada fixed by this section at $500, although there may be a number of respondents all in different interests. *Per* Osler, J.A., *Archer* v. *Severn*, 9 Ont. P. R. 472.

In *Wheeler* v. *Black*, 2 M. L. R., Q. B. 159, it was held by Cross, J., of the Court of Q. B. (P.Q.), after consultation with the other members of that court, that personal security is sufficient, and that the sureties need not justify on real estate.

The security required to obtain a stay of execution may be given by the same instrument whereby the security under section 46 is given. (Section 47, sub-section 2.)

By sub-section 30 of section 7 of the Interpretation Act, it is provided that, "The expression 'sureties' means sufficient sureties, and the expression 'security' means sufficient security, and whenever these words are used, one person shall be sufficient therefor, unless otherwise expressly required."

The following sections provide for a stay of execution in certain cases.

Execution stayed—Exceptions—If the judgment orders delivery of documents or personalty—Or execution of conveyance—If the court appealed from is one of appeal—If the judgment directs sale, etc., of realty—If the judgment directs payment of money as a debt, etc.—As to instrument for giving such security.

47. Upon the perfecting of such security, execution shall be stayed in the original cause, except in the following cases:—

(*a*) If the judgment appealed from directs an assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed, until the things directed to be assigned or delivered have been brought into court, or placed in the custody of such officer or receiver as the court appoints, nor until security has been given to the satisfaction of the court appealed from, or of a judge thereof, in such sum as the court or judge directs, that the appellant will obey the order or judgment of the Supreme Court;

(*b*) If the judgment appealed from directs the execution of a conveyance or any other instrument, the execution on the judgment shall not be stayed, until the instrument has been executed and deposited with the proper officer of the court appealed from, to abide the order or judgment of the Supreme Court;

(*c*) If the court appealed from is a court of appeal and such assignment or conveyance, document, instrument, property or thing, as aforesaid, has been deposited in the custody of the proper officer of the court in which the cause originated, the consent of the party desiring to appeal to the Supreme Court, that it shall so remain to

abide the judgment of the Supreme Court, shall be binding on him, and shall be deemed a compliance with the foregoing requirements of this section;

(*d*) If the judgment appealed from directs the sale or delivery of possession of real property, chattels real or immovables, the execution of the judgment shall not be stayed until security has been entered into to the satisfaction of the court appealed from, or a judge thereof, and in such amount as the said last mentioned court or judge directs, that during the possession of the property by the appellant he will not commit, or suffer to be committed, any waste on the property,—and that if the judgment is affirmed, he will pay the value of the use and occupation of the property from the time the appeal is brought until delivery of possession thereof,—and also, if the judgment is for the sale of property and the payment of a deficiency arising upon the sale, that the appellant will pay the deficiency;

(*e*) If the judgment appealed from directs the payment of money, either as a debt or for damages or costs, execution thereof shall not be stayed, until the appellant has given security to the satisfaction of the court appealed from, or of a judge thereof, that if the judgment or any part thereof is affirmed, the appellant will pay the amount thereby directed to be paid, or the part thereof as to which the judgment is affirmed, if it is affirmed only as to part, and all damages awarded against the appellant on such appeal;

2. Provided that in any case in which execution may be stayed on the giving of security under this section, such security may be given by the same instrument whereby the security prescribed in the next preceding section is given. 38 V., c. 11, s. 32.

Fiat to sheriff when security is perfected—If the court appealed from is one of appeal—Proviso; as to poundage.

48. When the security has been perfected and allowed, any judge of the court appealed from may issue his fiat to the sheriff, to whom any execution on the judgment has issued, to stay the execution, and the execution shall be thereby stayed, whether a levy has been made under it or not; and if the court appealed from is a court of appeal, and execution has been already stayed in the case, such stay of execution shall continue without any new fiat, until the decision of the appeal by the Supreme Court: Provided always, that upon any judgment appealed from, on which any execution is issued before the judge's fiat to stay the execution is obtained, no poundage shall be allowed against the appellant, unless a judge of the court appealed from otherwise orders. 38 V., c. 11, s. 33.

Money levied and not paid over before fiat to be repaid.

49. If, at the time of the receipt by the sheriff of the fiat, or of a copy thereof, the money has been made or received by him, but not paid over to the party who issued the execution, the party appealing may demand back from the sheriff the amount made or received under the execution, or so much thereof as is in his hands not paid over, and in default of payment by the sheriff, upon such demand, the party appealing may recover the same from him in an action for money had and received, or by means of an order or rule of the court appealed from. 38 V., c. 11, s. 35.

Perishable property.

50. If the judgment appealed from directs the delivery of perishable property, the court appealed from, or a judge

thereof, may order the property to be sold and the proceeds to be paid into court, to abide the judgment of the Supreme Court. 38 V., c. 11, s. 36.

As to staying proceedings under section 47, see cases cited in Maclennan's Judicature Act, 2nd edition pages 701-2, decided under the R. S. O. 1887, c. 38, s. 27, relating to appeals to the Court of Appeal of Ontario, which section is substantially the same as the above section, 47.

In England it is provided by Order 58, Rule 16, that "an appeal shall not operate as a stay of execution or proceedings, under the decision appealed from, except so far as the court appealed from, or any judge thereof, or the Court of Appeal may order." But a stay of execution for the payment of money or costs, under section 47, will be given to an appellant as a matter of right upon giving the security prescribed by that section.

DISCONTINUANCE OF PROCEEDINGS.

Discontinuing proceedings.

51. An appellant may discontinue his proceedings by giving to the respondent a notice entitled in the Supreme Court and in the cause, and signed by the appellant, his attorney or solicitor, stating that he discontinues such proceedings; and thereupon the respondent shall be at once entitled to the costs of and occasioned by the proceedings in appeal; and may, in the court of original jurisdiction, either sign judgment for such costs or obtain an order from such court, or a judge thereof, for their payment, and may take all further proceedings in that court as if no appeal had been brought. 38 V., c. 11. s. 39.

The respondent should file the notice of the discontinuance in the office of the registrar of the Supreme Court and obtain an appointment to tax the costs of the proceedings in appeal.

CONSENT TO REVERSAL OF JUDGMENT.

Consent to reversal.

52. A respondent may consent to the reversal of the judgment appealed against, by giving to the appellant a notice entitled in the Supreme Court and in the cause, and signed by the respondent, his attorney or solicitor, stating that he consents to the reversal of the judgment; and thereupon the court, or any judge thereof, shall pronounce judgment of reversal as of course. 38 V., c. 11, s. 40.

DISMISSAL FOR DELAY.

Dismissal for delay to proceed.

53. If an appellant unduly delays to prosecute his appeal, or fails to bring the appeal on to be heard at the first session of the Supreme Court, after the appeal is ripe for hearing, the respondent may, on notice to the appellant, move the Supreme Court, or a judge thereof in chambers, for the dismissal of the appeal; and such order shall thereupon be made as the said court or judge deems just. 38 V., c. 11, s. 41.

Rule 5 of the Supreme Court provides, that if the appellant does not file his case in appeal with the registrar, within one month after the security required by the Act shall be allowed, he shall be considered as not duly prosecuting his appeal, and the respondent may move to dismiss. The time may be extended by the Supreme Court or a judge thereof. (Rules 42 & 70).

But any unreasonable delay will expose the appellant to a motion to dismiss. And if the motion be granted by a judge in chambers in the reasonable and proper exercise of his discretion the court will not interfere. *Whitfield* v. *The Merchants' Bank*, Dig. S. C. D. p. 390, No. 51: *Coté* v. *Stadacona Ass. Co.*, *Ibid.* p. 390, No. 52: *Winnipeg* v. *Wright*, 13 Can. S. C. R. 441.

And such a motion should more properly be made to a judge in chambers. *Martin* v. *Roy*, *Ibid.* p. 390, No. 53. But in an Election appeal the motion should be made to the court and not to a judge in chambers, and it would seem that sections 51, 52 & 53, do not apply to such appeals. No Election appeal has been discontinued, dismissed, or the judgment in the case reversed, without an order of the court. *Soulanges Case*, Dig. S. C. D. p. 390, No. 54: *North York Election Case*, *Ibid.* p. 391, No. 55: *Charlevoix Election Case*, *Ibid.* p. 403, No. 99: *Lincoln Case*, *Patterson* v. *Rykert*: and *Russell Case*. (Not yet reported.)

Rule 44 provides that unless an appeal is brought on for hearing by the appellant within one year next after the security shall have been allowed, it shall be held to have been abandoned without any order to dismiss being required, unless the Supreme Court or a judge thereof shall otherwise order.

See Rule 70 and notes for other cases relating to the granting or refusing an extension of time for the prosecution of appeals.

As section 39, Supreme and Exchequer Courts Act, provides that proceedings in appeals shall, when not otherwise provided for, be as nearly as possible in conformity with the present practice of the Judicial Committee, it may be as well to refer to the practice of the Judicial Committee bearing on the dismissal of appeals for want of prosecution. By the present practice of the Judicial Committee of the Privy Council, the registrar or other proper officer having the custody of records in any court from which an appeal is brought, is directed to send a transcript of the record with all possible despatch to the registrar of the Privy Council; the appellant or his agent must within six calendar months from the arrival of the transcript and the registration of it in all matters brought by appeal from colonies and plantations east of the Cape of Good Hope or from the Territories of the East India Company, and within three months in all matters brought by appeal from any other part of Her Majesty's Dominions abroad, apply for the printing of the transcript and in default the appeal is to stand dismissed without further order. *Order of the 13th June, 1853.* (See Appendix.) This order, says Macpherson, (Prac. P. C. p. 96) has practically superseded the rule requiring the petition of appeal to be filed within a year and day. "The Judicial Committee would always," he adds, "have granted leave to appeal upon a proper case being made, even after the lapse of a year and a day from the judgment." And at page 99, he says: "Even when an appeal stands dismissed for want of prosecution, it is sometimes restored upon cause shown, proper terms being of course imposed. Indeed the Privy Council have gone a great way in excusing unintentional laches, in one case restoring a case after it had been dismissed for want of prosecution

during ten years." See Macpherson, chapter 5, beginning page 94, "on dismissal of appeals before hearing," for practice of the Judicial Committee generally in dealing with delays in prosecuting appeals.

PARTIES.

DEATH OF PARTIES.

Case of death of one of several appellants.

54. In the event of the death of one of several appellants, pending the appeal to the Supreme Court, a suggestion may be filed of his death, and the proceedings may, thereupon, be continued at the suit of and against the surviving appellant, as if he were the sole appellant; but such suggestion, if untrue, may be set aside on motion made to the Supreme Court, or a judge thereof in chambers. 38 V., c. 11, s. 42.

Of sole appellant or of all the appellants.

55. In the event of the death of a sole appellant, or of all the appellants, the legal representative of the sole appellant, or of the last surviving appellant, may, by leave of the court or a judge, file a suggestion of the death, and that he is such legal representative, and the proceedings may thereupon be continued at the suit of and against such legal representative as the appellant; and if no such suggestion is made, the respondent may proceed to an affirmance of the judgment, according to the practice of the court, or take such other proceedings as he is entitled to; and such suggestion, if untrue, may, on motion, be set aside by the court or a judge thereof. 38 V., c. 11, s. 43.

Of one of several respondents.

56. In the event of the death of one of several respondents, a suggestion may be filed of such death, and the

proceedings may be continued against the surviving respondent, but such suggestion, if untrue, may, on motion, be set aside by the court or a judge thereof. 38 V., c. 11, s. 44.

Of sole respondent or of all the respondents.

57. In the event of the death of a sole respondent, or of all the respondents, the appellant may proceed, upon giving one month's notice of the appeal and of his intention to continue the same, to the representative of the deceased party, or if no such notice can be given, then upon such notice to the parties interested as a judge of the Supreme Court directs. 38 V., c. 11, s. 45.

These provisions relate only to the contingency of the death of a party to the appeal. But Rule 36 supplements these sections by providing as follows: "In any case not already provided for by the Act, in which it becomes essential to make an additional party to the appeal, either as appellant or respondent, and whether such proceeding becomes necessary in consequence of the death or insolvency of any original party, or from any other cause, such additional party may be added to the appeal by filing a suggestion as nearly as may be in the form provided for by section 43 [now 55] of the Act."

Rules 37 and 38, provide a mode of setting aside such suggestion, and of trying any question of fact arising out of it.

In the event of the death of a party interested in an appeal between the hearing of the appeal and the delivery of judgment, the judgment of the Supreme Court will be entered *nunc pro tunc* as of the date of hearing. *Merchants' Bank* v. *Smith*, Dig. S. C. D. p. 396, No. 84: *Merchants' Bank* v. *Keefer*, *Ibid.* p. 396, No. 85: *Ontario & Quebec Railway Co.* v. *Philbrick*, *Ibid.* p. 397, No. 86.

As a general rule the appeal must be heard on the "case" as transmitted to the court.

In an appeal from Quebec, where it was sought to add a party as co-respondent on the ground that he had obtained from the respondents a notarial assignment of all their interest in the suit, made prior to the hearing of the case by the Court of Appeal of the province, the Supreme Court held that the application to add the assignee should have been made at the earliest opportunity to the court below and was not one the

Supreme Court should be called upon to decide. *Dorion* v. *Crowley*, Dig. S. C. D. p. 402, No. 97.

But where a party has been improperly joined, as co-plaintiff or co-defendant, the Supreme Court will order him to be struck out of the record. *Caldwell* v. *Stadacona F. & L. Ins. Co.*, Dig. S. C. D. p. 402, No. 96.

And where a party was, by the judgment of the court, made liable for the costs of the appeal, although he had in fact not been a party to such appeal, nor interfered in the appeal by depositing a factum, or appearing by counsel at the argument, the judgment was amended by the court. *Long* v. *Hancock* (not reported).

And where parties, other than those on the record, have an interest entitling them to prosecute an appeal in the name of the plaintiff on the record, the Supreme Court will permit them to do so, on such terms as may seem just. *Langtry* v. *Dumoulin*, Dig. S. C. D. p. 382, No. 10.

ENTRY OF CAUSES.

Entry of appeals on list and order of hearing.

58. The appeals set down for hearing shall be entered by the registrar of the court, on a list, divided into three parts, and to be numbered and headed as follows: "Number one, Maritime Provinces cases;" "Number two, Quebec cases;" "Number three, Ontario cases:" and the registrar shall enter all appeals from the Provinces of Nova Scotia, New Brunswick and Prince Edward Island on part numbered one, and all appeals from the Province of Quebec on part numbered two, and all appeals from the Provinces of Ontario, Manitoba and British Columbia [and from the North-west Territories] on part numbered three, in the order in which they are respectively received; and such appeals shall be heard and disposed of in the order in which they are so entered, unless otherwise ordered by the court. 42 V., c. 39, s. 15.

It has been the practice to give Election appeals precedence, as required by the spirit of the provisions relating to such appeals.

No appeal can be set down for hearing which has not been filed twenty clear days before the first day of the session. (Rule 31 as amended by Rule 80). Nor unless the appellant's factum has been deposited in the proper time. But if the respondent fails to deposit his factum in the proper time the appellant may inscribe the appeal for hearing *ex parte*. (Rule 27). Such inscription *ex parte* may be set aside upon an application to a judge in chambers sufficiently supported by affidavits. (Rule 28).

The registrar should be requested to inscribe the appeal for hearing by præcipe filed in his office.

JUDGMENTS.

Quashing proceedings in certain cases.

59. The Supreme Court may quash proceedings in cases brought before it, in which an appeal does not lie, or whenever such proceedings are taken against good faith. 38 V., c. 11, s. 37.

When an appeal is quashed for want of jurisdiction, the court may order the taxation and payment of costs. *Beamish* v. *Kaulbach*, Dig. S. C. D. p. 387, No. 34.

A motion to quash should be made to the court, and not to a judge in chambers. And should be made at the earliest convenient moment.

In *The Queen* v. *Nevins*, Dig. S. C. D. p. 246, No. 33, although the objection was taken by the court, the appellant was allowed costs. *Major* v. *The Corporation of Three Rivers*, *Ibid.* p. 241, No. 26.

But when the objection to the jurisdiction is taken at the hearing by the court, as a general rule no costs will be given. *Champoux* v. *Lapierre*, Dig. S. C. D. p. 244, No. 31: *Gendron* v. *McDougall*, *Ibid.* p. 248, No. 36: *Bank of Toronto* v. *LeCuré, etc., of the Parish of Nativité*, *Ibid.* p. 250, No. 40: *Domville* v. *Cameron*, *Ibid.* p. 240, No. 23. In this last case the appeal was heard *ex parte*, the respondent not appearing.

When the objection to the jurisdiction is taken by the respondent in his factum, and the motion made to the court at the earliest convenient time, the general costs of the appeal will be given, and a counsel fee as on motion to quash. *Danjou* v. *Marquis*, 3 Can. S. C. R. 251: Dig. S. C. D. p. 232, No. 11: *Reid* v. *Ramsay*, *Ibid.* p. 238, No. 21: *McGowan* v. *Mockler*, *Ibid.* p. 239, No. 22; *LeMaire, etc., de Terrebonne* v. *Les Sœurs de l'Asile de la Providence*, *Ibid.* p. 253, No. 43.

On a motion to quash, a fee of $25 may be allowed, according to discretion of the registrar, subject to be increased by order of the court or a judge. In *Danjou* v. *Marquis* (*supra*), the fee was increased to $75. In *McGowan* v. *Mockler* (*supra*), the fee was increased to $50.

Appeal may be dismissed or judgment given.

60. The Supreme Court may dismiss an appeal, or give the judgment, and award the process or other proceedings which the court, whose decision is appealed against, should have given or awarded. 38 V., c. 11, s. 38, *part*.

Section 53 provides for the dismissal of an appeal by the Supreme Court or a judge thereof for delay.

New trial may be ordered.

61. On any appeal the court may, in its discretion, order a new trial, if the ends of justice seem to require it, although such new trial is deemed necessary upon the ground that the verdict is against the weight of evidence. 43 V., c. 34, s. 4.

This section establishes an exception to section 27. See also section 24, paragraph (*g*), and section 30.

When the court below, in the exercise of its discretion, has ordered a new trial on the ground that the verdict is against the weight of evidence, the Supreme Court will not entertain the appeal. *Eureka Woolen Mills* v. *Moss*, 11 Can. S. C. R. 91.

COSTS.

Payment of costs.

62. The Supreme Court may, in its discretion, order the payment of the costs of the court appealed from, and also of the appeal, or any part thereof, as well when the judgment appealed from is varied or reversed as where it is affirmed. 38 V., c. 11, s. 38, *part*.

This is taken from the latter part of section 38 of the Supreme and Exchequer Courts Act of 1875, but that section read "as well when the

judgment appealed from is reversed as where it is affirmed." It has been thought necessary or advisable to provide specially for the case where the judgment is varied.

Section 79 of the Supreme and Exchequer Courts Act of 1875, provided that the judges of the Supreme Court or any five of them might from time to time make general rules and orders, among other things, "for fixing the fees and costs to be taxed and allowed to and received and taken by * * * the officers of the said courts."

By section 32 of the Supreme Court Amendment Act of 1879, it was provided that the judges of the Supreme Court or any five of them might, under the 79th section of the Act of 1875, from time to time make general rules and orders for awarding and regulating costs in the Supreme and Exchequer Courts in favor of and against the Crown as well as the subject.

These provisions of section 79 of the Act of 1875, and section 32 of the Act of 1879, were consolidated in section 109 of the Revised Act.

Rule 57 provides that costs in appeal between party and party shall be taxed pursuant to the tariff of fees contained in Schedule D to the orders.

This tariff has been amended in certain particulars by Rules 81 & 82.

The court has not thought it advisable to regulate costs between solicitor and client. The registrar does not tax such costs. *Boak* v. *Merchants Marine Ins. Co.*, Dig. S. C. D. p. 387, No. 35.

The general rule has been to allow costs to the successful party; even when an appeal has been quashed for want of jurisdiction. But not when the objection to the jurisdiction has been taken by the court itself. See notes to section 59.

Where an appeal was allowed on an objection taken for the first time on the argument of the appeal before the Supreme Court no costs were given. *Canada Southern Ry. Co.* v. *Norvell*, Dig. S. C. D. p. 15, No. 5.

In an appeal from Quebec, where an objection that the action had been prescribed was taken by the appellant (defendant) for the first time on the argument of the appeal, the court held that it was bound to give effect to the objection, but the appeal was allowed without costs in any of the courts. *Dorion* v. *Crowley*, Dig. S. C. D. p. 420, No. 12.

The uniform practice has been not to give costs where the court has been equally divided. Dig. S. C. D. p. 386, No. 29.

In *habeas corpus* appeals and Criminal appeals, as a general rule no costs are given. *In re G. R. Johnson*, Dig. S. C. D. p. 386, No. 31: and p. 540, No. 4.

But where an appeal in a *habeas corpus* matter had been proceeded with after the discharge of the prisoner and for the mere purpose of obtaining a decision on the question of costs, the appeal was dismissed with costs. *Fraser* v. *Tupper*, Dig. S. C. D. p. 240, No. 24.

Rule 58 provides that the court or a judge may direct a fixed sum for costs to be paid in lieu of directing the payment of costs to be taxed.

In interlocutory applications not provided for in the tariff (schedule D.) costs have usually been fixed, in pursuance of this order.

Section 35 of the Supreme Court Amendment Act of 1879 provided, that an order in either the Supreme Court or the Exchequer Court for payment of money, whether for costs or otherwise, might be enforced by the same writs of execution as a judgment in the Exchequer Court.

This section was introduced into the Revised Statute as section 107. Now, by chapter 16 of 50 & 51 V., sch. A, the following section is substituted: "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."

By section 108 of the Revised Act, it is provided, that no attachment as for contempt shall issue in the Supreme Court for the non-payment of money only.

By Rule 59 it is provided, that the payments of costs, if so ordered, may be enforced by process of execution in the same manner and by means of the same writs and according to the same practice as may be in use from time to time in the Exchequer Court of Canada. See this rule and notes.

Writs of execution have never been issued from the Supreme Court of Canada to enforce payment of the costs of appeal. Payment of such costs must be enforced by process from the courts below. But a writ of execution may be issued in an election appeal for the costs of the appeal. In *North Ontario Case*, (*Wheler* v. *Gibbs*), February, 1881, a *fi. fa.* goods was issued for such costs.

But with respect to costs of the court below in an election case, see section 54 of the Dominion Controverted Elections Act, and Election Appeals, *post*, Part II.

For interlocutory costs, a writ of execution may be obtained from the Supreme Court.

As to distraction of costs, it has been held that where distraction has not been asked for by the pleadings, or by the factum, it should be asked for when judgment is rendered. If not then asked for, any subsequent application must be made to the court upon notice to the other side. *Letourneux* v. *Dansereau*, Dig. S. C. D. p. 387, No. 36.

When no one appears on behalf of appellant when an appeal is called for hearing and counsel for respondent asks for the dismissal of the appeal, it will be dismissed with costs. Dig. S. C. D. and cases cited, p. 389, No. 50.

See further, Rule 57 and notes, for the practice relating to costs generally, and the taxation and enforcement of payment of costs.

AMENDMENTS.

Necessary amendments may be made.

63. At any time during the pendency of any appeal before the Supreme Court, the court may, upon the application of any of the parties, or without any such application, make all such amendments as are necessary for the purpose of determining the appeal, or the real question or controversy between the parties, as disclosed by the pleadings, evidence or proceedings. 43 V., c. 34, s. 1.

At whose instance.

64. Any such amendment may be made, whether the necessity for the same is or is not occasioned by the defect, error, act, default or neglect of the party applying to amend. 43 V., c. 34, s. 2.

Conditions of amendment.

65. Every amendment shall be made upon such terms as to payment of costs, postponing the hearing or otherwise, as to the court seems just. 43 V., c. 34, s. 3.

As to amending a record by adding a plea of justification under writ, in an action against sheriff for seizing logs under writ of replevin, see *Swim* v. *Sheriff*, Dig. S. C. D. p. 77, No. 14.

As to amending pleadings in action brought by a corporation against defendant for selling without license contrary to by-laws, see *Piché* v. *City of Quebec*, Dig. S. C. D. p. 273, No. 7.

Appeal refused from an interlocutory judgment of the court below refusing motion for leave to file new pleas. *Dawson* v. *Union Bank*, Dig. S. C. D. p. 247, No. 35.

Amending Case.

As to what the "case" should contain, see section 44, and notes.

Rule 4 of the Supreme Court provides that the court, or a judge thereof, may order the case to be remitted to the court below, in order that it may be made more complete by the addition thereto of further matter.

If the formal order or judgment of the court below has not been made part of the case, the case cannot be received by the registrar, and if received, the court may order the appeal to stand over till perfected. *Kearney* v. *Kean*, Dig. S. C. D. p. 383, No. 11.

In one appeal the court ordered the appeal to be placed at the foot of the list for hearing, to permit the rule of the court below to be added, counsel for respondent consenting. *Wallace* v. *Souther*, *Ibid.* p. 383, No. 12.

In an appeal from British Columbia, where the case contained no formal order or judgment of the court below, over-ruling demurrers, upon application of the agent for appellant's solicitors, the agent of respondent's solicitors consenting, it was ordered that the registrar be at liberty to file the case as received, without the formal order, and that the appellants might attach within six weeks from that date the said formal order to the case and copies. *Bank of B. N. A.* v. *Walker*, Dig. S. C. D. p. 383, No. 14.

Where it appeared on the argument of the appeal that the decree of the court of first instance was not in the case, the argument was allowed to proceed on counsel undertaking to have decree added before judgment given. *Wright* v. *Huron*, Dig. S. C. D. p. 384, No. 17.

An application to amend the "case" should be made to a judge in chambers and not to the court. *Ætna Ins. Co.* v. *Brodie*, Dig. S. C. D. p. 383, No. 15.

Where the judge of the court below had certified that the examination of one D. was made part of the case *quantum valeat*, the Supreme Court remitted the case to the court below, to be settled in accordance with the statute and practice, holding that it should appear clearly whether the examination did or did not properly form a part of the case. *McCall* v. *Wolff*, Dig. S. C. D. p. 384, No. 16.

Where it appeared that certain papers which a judge of the court below had directed should form part of the case had been incorrectly printed, the registrar was directed to remit the case to the court below to be corrected. *Parker* v. *Montreal City Passenger Railway Co.*, Dig. S. C. D. p. 385, No. 21.

Amending Judgment.

When it is clear that by oversight or mistake an error has occurred in the judgment of the court, the court has power of its own motion to

amend its judgment to make it conform to the intention of the court, and the principles upon which its judgment was based. *Rattray* v. *Young*, Dig. S. C. D. p. 400, No. 92: *Penrose* v. *Knight*, *Ibid.* p. 397, No. 90: *Smith* v. *Goldie*, *Ibid.* p. 397, No. 91.

A motion to amend must not be practically a motion to reverse the judgment of the court. *Reeves* v. *Gerriken*, *Ibid.* p. 397, No. 88.

When the judgment is amended to conform to the intention of the court, the judgment will be made to read *nunc pro tunc*. *Smith* v. *Goldie*, *Ibid.* p. 397, No. 87.

When a new trial had been ordered by the Supreme Court, on the ground that an important question had not been submitted to or answered by the jury, a motion to set aside the judgment and re-open the hearing, supported by affidavits stating that as a matter of fact such question had actually been answered by the jury, was refused with costs, the court holding that it was bound by the case as transmitted, and as forming the material upon which the hearing was based. *Providence Washington Ins. Co.* v. *Gerow*, (not yet reported).

INTEREST.

Interest to be allowed.

66. If on appeal against any judgment, the Supreme Court affirms such judgment, interest shall be allowed by the court for such time as execution has been delayed by the appeal. 38 V., c. 11, s. 34.

The question of the allowance of interest, for time judgment has been stayed by the appeal, is one which the court will dispose of on its own motion. *McQueen* v. *The Phœnix Mutual Fire Ins. Co.*, Dig. S. C. D. p. 396, No. 81.

In an appeal from New Brunswick it was held that interest should be allowed on the principal sum from last day of next term after verdict. *Clark* v. *Scottish Imperial Ins. Co.*, *Ibid.* p. 396, No. 82.

CERTIFICATE OF JUDGMENT.

Judgment to be carried out by the court below.

67. The judgment of the Supreme Court in appeal shall be certified by the registrar of the court to the proper

officer of the court of original jurisdiction, who shall thereupon make all proper and necessary entries thereof; and all subsequent proceedings may be taken thereupon as if the judgment had been given or pronounced in the said last mentioned court. 38 V., c. 11, s. 46.

68 & 69. [These sections, which related to criminal appeals have been repealed by chapter 50 of 50-51 V., which substituted other provisions. See Criminal Appeals, *post*, p. 72.]

70. [Relating to appeals from the Exchequer Court, has been repealed by chapter 16 of 50-51 V., which has substituted other provisions. See Exchequer Appeals, *post*, p. 77.]

JUDGMENT FINAL AND CONCLUSIVE.

Judgment to be final—Saving H. M. prerogative.

71. The judgment of the Supreme Court shall, in all cases, be final and conclusive, and no appeal shall be brought from any judgment or order of the Supreme Court to any court of appeal established by the Parliament of Great Britain and Ireland, by which appeals or petitions to Her Majesty in Council may be ordered to be heard: saving any right which Her Majesty may be graciously pleased to exercise by virtue of her royal prerogative. 38 V., c. 11, s. 47.

Compare this section with the provisions making the judgment of the Supreme Court final in criminal appeals, and taking away any appeal to the Privy Council in such appeals. See Part II, Criminal Appeals. Many of the cases in which application has been made to the Judicial Committee of the Privy Council for leave to appeal, with the result in each case, have been noted in the Dig. S. C. D. p. 541.

For other cases appealed to the Privy Council since the issue of the Digest, see 13 Can. S. C. R. page 19.

A party wishing to appeal to the Privy Council does not apply to the Supreme Court for leave to appeal. The court has held that it has no power to entertain such an application. Dig. S. C. D. p. 403, No. 98.

The usual practice is to apply to the registrar of the Supreme Court for a certified copy of the case, factums, judgment and reasons of the judges. The Judicial Committee has held that it will not entertain any application for leave to appeal, unless the final judgment of the Supreme Court has been drawn up and entered. *Pion* v. *North Shore Ry. Co.* After obtaining the certified copy of the papers, the proceedings before the Judicial Committee are by petition and affidavit. See Macpherson, Privy Council Practice, page 22, *et seq.*, and Lattey's Privy Council Practice, page 32, *et seq.*

If leave to appeal is granted, the registrar of the Supreme Court is directed by order of the Privy Council to send the necessary papers to the registrar of the Privy Council.

In several appeals recently allowed the Judicial Committee has accepted the papers already certified by the registrar as sufficient, and has dispensed with the transmission of any others, the documents transmitted by the registrar, in obedience to the order, being the same as those furnished to the appellant and laid by him before the Judicial Committee.

If he wishes to do so, the appellant may print the record before it is transmitted to England, but he must be careful to comply with the rules of the Judicial Committee regulating the size of type, style, etc. These rules will be found on page 68, appendix, Macpherson's Privy Council Practice. See also appendix, *post*. The type used for the Privy Council is pica, a size not much used in this country, most of our statutes, reports, etc., being printed in small pica, which is also the type required for cases and factums in the Supreme Court. If the record is not printed at all, or not printed in accordance with the rules of the Judicial Committee, the printing must be done in London.

In Lattey's Handibook on Privy Council Practice it is stated, page 3: "One great objection to the record being printed abroad is, that a successful appellant is unable to recover the cost of printing from the respondent, whilst if the record is printed in England such charges are always included in the solicitor's bill, and are allowed on taxation."

The order in appeal of the Privy Council is given to the solicitor of the successful party. If it reverses the judgment of the Supreme Court it should, on motion, be made an order of that court (*Lewin* v. *Wilson*), be entered on the records of the court and then certified to the court below.

If the judgment of the Supreme Court be affirmed it is not necessary to have the order of the Privy Council made an order of the Supreme Court. It is sufficient to make it an order of the court of original jurisdiction.

The application to make an order of the Privy Council an order of the Supreme Court may be made in chambers.

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 V., c. 11, s. 54.

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 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 V., c. 11, ss. 55 & 56; 39 V., c. 26, s. 17.

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 V., c. 11, s. 57.

The Legislature of Ontario passed an Act in 1877 consenting to the jurisdiction provided for by section 72 being exercised. This Act was chapter 37 of the R. S. O. 1877, and has been again enacted as chapter 42 of the R. S. O. 1887. See Appendix III. The Legislature of Nova Scotia has passed a similar Act—Chapter 111 of the Revised Statutes, 5th series. The Legislature of British Columbia has also passed a similar Act. 44 V., c. 6.

75-90. [Have been repealed by 50-51 V., c. 16, Sch. B.]

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 V., c. 11, s. 74.

Commissioners for receiving affidavits may be appointed.

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 to 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:

Style of commissioner.

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 V., c. 26, s. 10.

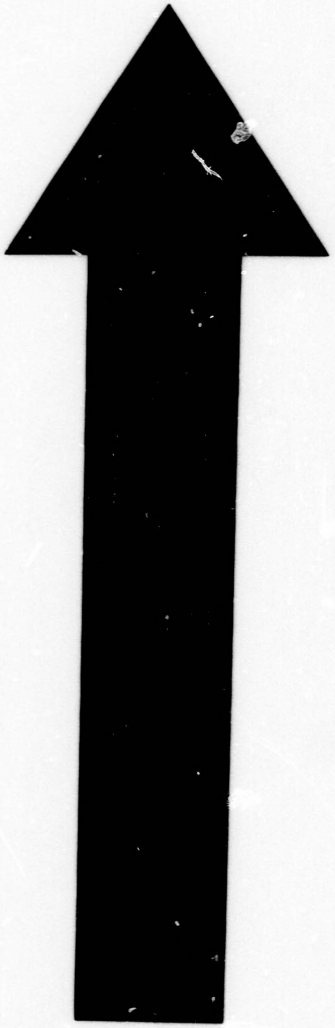
Before whom affidavits, etc., may be made out of Canada—Their effect.

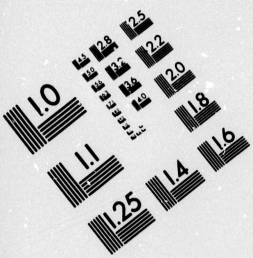
93. Any oath, affidavit, affirmation or declaration, administered, sworn, affirmed or made out of Canada,

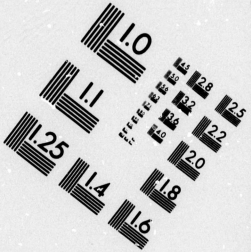
before any commissioner authorized to take affidavits to be used in Her Majesty's High Court of Justice in England, or before any notary public, and certified under his hand and official seal, or before the mayor or chief magistrate of any city, borough or town corporate in Great Britain or Ireland, 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 V., c. 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







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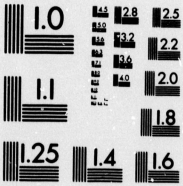

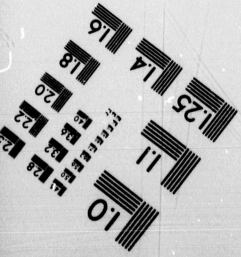

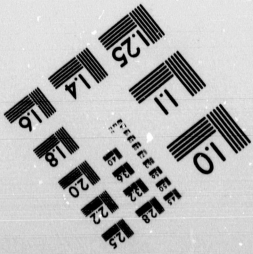

testimony of any oath, affidavit, affirmation or declaration, having been administered, sworn, affirmed or made by or before him, shall be admitted in evidence without proof of any such signature or seal being the signature or signature and seal of the person whose signature or signature and seal the same purport to be, or of the official character of such person. 39 V., c. 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 V., c. 26, s. 15.

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

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 expense 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:

Interpretation—"Witness."

2. The person, whether a party or not, to be examined under the provisions of this Act, is hereinafter called a "Witness." 39 Vic., c. 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 V., c. 26, s. 2 *part*; —40 V., c. 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 or judge, in its or his discretion, may decline to act on the evidence. 39 V., c. 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 V., c. 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 question which he would not be bound to answer in court. 39 V., c. 26, s. 5; 40 V., c. 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 thereunder. 39 V., c. 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 V., c. 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 examinations, 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 V., c. 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 V., c. 26, s. 9.

GENERAL PROVISIONS.

Process and officers of the court.

105. The process of the Supreme Court shall run throughout Canada, and shall be tested in the name of the chief justice, or in case of a vacancy in the office of chief justice, in the name of the senior puisné judge of the court, and 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 Supreme Court, and shall perform the duties and functions of sheriffs in connection with the 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. 38 V., c. 11, ss. 66 *and* 75.

See section 107 and notes.

The section as it formerly stood referred also to the process of the Exchequer Court and made the sheriffs officers of that court. Now, with regard to the Exchequer Court, see sections 42 & 43 of chapter 16 of 50-51 V.

Further powers of commissioners.

106. 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 Supreme Court. 39 V., c. 26, s. 11.

This section formerly applied to the Exchequer Court as well as the Supreme Court.

Enforcement of orders for payment of money.

[**"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."] 39 V., c. 26, s. 35.

Section substituted by 50-51 V., c. 16, sch. A., for the original section, which provided that an order in either the Supreme or Exchequer Court for the payment of money might be enforced by the same writs of execution as a judgment in the Exchequer Court.

Rule 59 provided, that the payment of costs, if so ordered, might be enforced by process of execution in the same manner and by means of the same writs and according to the same practice as might be in use from time to time in the Exchequer Court of Canada. And Rule 60 provided for the punishment of contempts according to the practice in force in the

Exchequer Court of Canada. (See *post* pp. 134, 135 and 155.) By General Order 85, (*post* p. 155) Rules 59 and 60 have been repealed, the writs to be issued out of the Supreme Court prescribed and the practice relating thereto regulated.

Rules 166, *et seq.*, of the Exchequer Court provide for the issuing of writs in that court.

No attachment for non-payment only.

[**"108.** No attachment as for contempt shall issue in the Supreme Court for the non payment of money only."] 39 V., c. 26, s. 36.

Substituted by 50-51 V., c. 16, sch. A., for the original section which applied also to the Exchequer Court. See General Order 85, *post* p. 155.

Judges may make rules of procedure and as to costs.

[**"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 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 shall be laid before both Houses of Parliament at the session next after the making thereof."] 38 V., c. 11, s. 79; 39 V., c. 26, ss. 32 *and* 37.

Substituted section: see 50-51 V., c. 16, sch. A.

The portion of this section relating to the giving to the registrar the jurisdiction of a judge in chambers is new. Rule 83, passed in pursuance of this section, confers upon the registrar all the authority and jurisdiction of a judge in chambers, except in relation to matters of *habeas corpus* and *certiorari*.

By the Interpretation Act, section 7, sub-section 45, it is provided, that:

"Whenever power to make by-laws, regulations, rules or orders is conferred, it shall include the power, from time to time, to alter or revoke the same and make others."

How costs to and against the Crown shall be paid.

["**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."]

Substituted section: see 50-51 V., c. 16, sch. A.

Fees to be paid by stamps.

111. 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. 38 V., c. 11, s. 72

Publication of reports of decisions.

["**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."]

Substituted section: see 50-51 V., c. 16 sch. A.

PART II.

APPEALS UNDER SPECIAL ACTS.

PART II.

APPEALS UNDER SPECIAL ACTS.

I.—Criminal Appeals.

II.—Exchequer Appeals.

III.—Appeals from the Maritime Court of Ontario.

IV.—Election Appeals.

V.—Appeals under the Winding Up Act.

For the sake of convenience it has been thought better to deal with these appeals separately, but it must be borne in mind that all the general provisions of the Supreme and Exchequer Courts Act apply to such appeals, unless the special Act relating to any particular class of appeals otherwise provides, or the provisions of any such special Act are inconsistent with such an application. See section 25, Supreme and Exchequer Courts Act.

I. CRIMINAL APPEALS.

Appeals to the Supreme Court of Canada in criminal matters were originally provided for by sections 49 & 50 of the Supreme and Exchequer Courts Act of 1875.

By section 31 of the Supreme Court Amendment Act of 1879, all appellate jurisdiction in *habeas corpus* matters, arising out of any claim for extradition made under any treaty, was taken away.

These provisions were consolidated in sections 68 & 69, R. S. C. c. 135.

These sections of chapter 135 have been repealed by chapter 50 of 50 & 51 V., which is as follows:

50-51 VICTORIA.

CHAPTER 50.

An Act to amend the law respecting Procedure in Criminal Cases.

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

Preamble.

HER MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

R. S. C., c. 174, s. 268, repealed; new section.

1. Section two hundred and sixty-eight of "*The Criminal Procedure Act*" is hereby repealed and the following substituted therefor:—

APPEALS AND NEW TRIALS.

Appeal in case of conviction of an indictable offence—Proceedings thereupon—When appeal shall not be allowed.

"**268.** Any person convicted of any indictable offence, or whose conviction has been affirmed before any Court of

Oyer and Terminer or Gaol Delivery, or before the Court of Queen's Bench in the Province of Quebec, on its Crown side, or before any other superior court having criminal jurisdiction, whose conviction has been affirmed by any court of last resort, or, in the Province of Quebec, by the Court of Queen's Bench on its appeal side, may appeal to the Supreme Court against the affirmance of such conviction; and the Supreme Court shall make such rule or order therein, either in affirmance of the conviction, or for granting a new trial, or otherwise, or for granting or refusing such application, as the justice of the case requires, and shall make all other necessary rules and orders for carrying such rule or order into effect: Provided that no such appeal shall be allowed if the court affirming the conviction is unanimous, nor unless notice of appeal in writing has been served on the Attorney-General for the proper Province, within fifteen days after such affirmance:

When appeal must be brought to hearing.

"2. Unless such appeal is brought on for hearing by the appellant at the session of the Supreme Court during which such affirmance takes place, or the session next thereafter, if the said court is not then in session, the appeal shall be held to have been abandoned, unless otherwise ordered by the Supreme Court:

Judgment to be final.

"3. The judgment of the Supreme Court shall, in all cases, be final and conclusive:

When a new trial may and may not be granted.

"4. Except as hereinbefore provided, a new trial shall not be granted in any criminal case unless the conviction

is declared bad for a cause which makes the former trial a nullity, so that there was no lawful trial in the case; but a new trial may be granted in cases of misdemeanor in which, by law, new trials may now be granted:

No appeal to any court in the United Kingdom.

"5. Notwithstanding any royal prerogative, or anything contained in "*The Interpretation Act*" or in "*The Supreme and Exchequer Courts Act*," no appeal shall be brought in any criminal case from any judgment or order of any court in Canada to any court of appeal established by the Parliament of Great Britain and Ireland, by which appeals or petitions to Her Majesty in Council may be ordered to be heard."

This sub-section has been repealed and another substituted. See *infra*.

Repeal; R. S. C., c. 135, ss. 68 & 69.

2. Sections sixty-eight and sixty-nine of "*The Supreme and Exchequer Courts Act*" are hereby repealed.

When foregoing provisions shall take effect.

3. The foregoing provisions of this Act shall not come into force until a day to be named by the Governor General by his proclamation to that effect.

R. S. C., c. 174, s. 265, amended.

4. Section two hundred and sixty-five of "*The Criminal Procedure Act*" is hereby amended by striking out the words "in the Province of Quebec."

The fifth sub-section of section 1 of this Act, has been repealed by chapter 43 of 51 Victoria (1888), "an Act further to amend the law respecting Procedure in Criminal Cases," and the following sub-section enacted in lieu thereof:

"5. Notwithstanding any royal prerogative, or anything contained in "*The Interpretation Act*" or in "*The Supreme*

and Exchequer Courts Act," no appeal shall be brought in any criminal case from any judgment or order of any court in Canada to any court of appeal or authority, by which in the United Kingdom appeals or petitions to Her Majesty in Council may be heard."

By proclamation dated the 28th of September, 1887, issued in the *Canada Gazette* of the 1st October, 1887, the first and second sections of 50-51 V., c. 50, were brought into force upon the said last mentioned day.

No appeal is allowed "if the court affirming the conviction is unanimous, nor unless notice of appeal in writing has been served on the Attorney-General for the proper Province within fifteen days after such affirmance." (Section 268.)

And the appeal must be brought on for hearing at the session of the Supreme Court, during which such affirmance takes place, or the session next thereafter if the said court is not then in session, unless otherwise ordered by the Supreme Court. (Section 268, sub-section 2.)

In *Amer* v. *The Queen*, 2 Can. S. C. R. 592, it was held that the affirmance of a conviction by two judges of the Court of Queen's Bench for Ontario, the third judge of said court being absent, was the affirmance by a unanimous court within the meaning of the Act.

By sub-sections 3 & 5, section 1, chapter 50 of 50-51 V., as amended by 51 V., c. 43, the judgment of the Supreme Court is final, and no appeal can be had to the Privy Council, notwithstanding the royal prerogative.

These appeals are therefore in this respect on a different footing from other appeals, in which Her Majesty's prerogative may still be exercised.

Section 71 of the Supreme and Exchequer Courts Act provides as follows: "The judgment of the Supreme Court shall in all cases be final and conclusive and no appeal shall be brought from any judgment or order of the Supreme Court to any Court of Appeal established by the Parliament of Great Britain and Ireland by which appeals or petitions to Her Majesty in Council may be ordered to be heard: saving any right which Her Majesty may be graciously pleased to exercise by virtue of her royal prerogative."

Appeals from the appellate tribunals of the various provinces of Canada to Her Majesty's Privy Council are regulated by statutes giving an appeal direct from such tribunals, and the Supreme and Exchequer Courts Act has not interfered with any such right.

By section 91 of British North America Act the exclusive legislative authority of the Parliament of Canada is declared to extend to all matters coming within the classes of subjects next therein after enumerated and, among others, "No. 27, the criminal law, excepting the constitution of courts of criminal jurisdiction, but including the procedure in criminal cases."

By section 101 of the British North America Act it is provided, that "The Parliament of Canada may, notwithstanding anything in this Act, from time to time provide for the constitution, maintenance and organization of a general Court of Appeal for Canada and for the establishment of any additional courts for the better administration of the laws of Canada."

As the right of appeal now stands in Canada the Supreme Court of Canada, as we have seen, is not a final court, section 71 of the Supreme and Exchequer Courts Act expressly says, "saving any right which Her Majesty may be graciously pleased to exercise by virtue of her royal prerogative," and it having been the continued practice of the Judicial Committee to entertain appeals from the Supreme Court where it has considered that any error of law has been made, and substantial interests have been involved.

See notes to section 71 of the Supreme and Exchequer Courts Act.

The Supreme Court can be considered a general Court of Appeal for the Dominion in only a limited sense, while in addition to this power of appealing from the Supreme Court itself to the Privy Council, there exists in every province the right of appeal to the same tribunal from the appellate court of such province.

It cannot at the present day be contended that the general Court of Appeal for Canada is limited to dealing with questions arising solely under the laws of Canada. The Parliament of Canada by its legislation has decided otherwise, and the Supreme Court of Canada, by an exercise of jurisdiction, extending now over twelve years, an exercise of jurisdiction recognized by the Judicial Committee of the Privy Council, has also decided otherwise.

It is submitted that it was intended by the Constitutional Act that the jurisdiction of the Supreme Court should be general and exclusive, and its judgments final, both as regards Civil and Criminal appeals.

The procedure in Criminal appeals in the Supreme Court is regulated by rules 46, 47, 48 & 49.

No printed case, or factum, is required, and no fees have to be paid to the registrar. Dig. S. C. D. p. 392, No. 68. And no security has to be given. See section, 46 sub-section 2, Supreme and Exchequer Courts Act.

II. EXCHEQUER APPEALS.

These appeals are now regulated by sections 51, 52 & 53, chapter 16, 50-51 V., which are as follows:

APPEALS FROM THE EXCHEQUER COURT.

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

51. Any party to a suit in the Exchequer Court, in which the actual amount in controversy exceeds five hundred dollars, who is dissatisfied with the decision therein, and desirous of appealing against the same, may, within thirty days from the day on which such decision 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, 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.

No appeal when amount does not exceed $500—Exceptions—Validity of Acts—Sums payable to H. M. and title to lands.

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,—

(*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—

(*b.*) Relates to any fee of office, duty, rent, revenue or any sum of money payable to Her Majesty, or to any title to any lands or tenements, annual rents or such like matters or things where the rights in future might be bound:

Leave to appeal in such cases.

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.

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.

The words in section 51, "in which the actual amount in controversy exceeds five hundred dollars," were not in the original section providing for appeals to the Supreme Court, but appeals to the Exchequer Court from the official arbitrators were limited to cases in which the claim exceeded in value five hundred dollars, according to the *bonâ fide* belief of the party or parties complaining of the award as shown on affidavit. R. S. C., c. 40, repealed by 50-51 V., c. 16, sch. B.

And by section 51 the time within which notice of setting down may be given has been extended from three days to ten.

In other respects this section is identical with section 68 of 38 V., c. 11.

With respect to section 52, see section 29, and notes, *ante*, relating to appeals from the Province of Quebec, for the construction of the various limitations of the right of appeal.

Where the registrar has set down an appeal, and for any reason the parties fail to bring it on for hearing, the registrar should not set it down a second time without an order. *Per* Fournier, J., in *McQueen* v. *The Queen.*

The amount of deposit required by way of security for costs has hitherto proved entirely inadequate. Most of the appeals have involved large interests. The framers of the original section may have intended to check frivolous appeals on interlocutory applications, rather than to provide for security in the event of an appeal from the final judgment. Strong, J. in *Danjou* v. *Marquis*, 3 Can. S. C. R. 257, expressed the opinion that the word "decision" implied that it was not intended to confine appeals in Exchequer cases to final judgments only.

Semble, that the word "decision" covers the decision of a judge of the Exchequer Court in chambers discharging a summons to fix the trial. *Per* Ritchie, C.J., in *Ontario* v. *Canada*, on appeal from Gwynne J., June 21st, 1886.

See section 30, Supreme and Exchequer Courts Act.

In section 52, which is new, the word "judgment" is used. This section extends the jurisdiction in certain cases, although the actual amount in controversy may be under $500; provided the appeal be allowed by a judge of the Supreme Court. (Sub-section 2.)

No deposit is required if the appeal is by or on behalf of the Crown. A notice stating that the Crown is dissatisfied with "a decision," takes the place of a deposit. (Section 53.)

In this section the word "decision" is used again, and not "judgment."

The rules of the Supreme Court relating to proceedings in ordinary appeals regulate the proceedings also in Exchequer appeals. See Rule 45.

III. APPEALS FROM THE MARITIME COURT OF ONTARIO.

These appeals are provided for by "The Maritime Court Act," R. S. C., c. 137. The sections of this Act regulating such appeals are:

Appeal to Supreme Court.

18. An appeal shall lie to the Supreme Court of Canada from every decision of the court having the force and effect of a definitive sentence or final order. 40 V., c. 21, s. 19.

Procedure in such appeal.

19. The practice, procedure and powers as to costs, and otherwise, of the Supreme Court of Canada in other appeals shall, so far as applicable, and unless such court otherwise orders, apply and extend to appeals under this Act, when no other provision is made, either by this Act or the general rules made under this Act, or under "*The Supreme and Exchequer Courts Act.*" 40 V., c. 21, s. 20.

In the case of "The Picton," 4 Can. S. C. R. 648, the Supreme Court held the original Maritime Court Act, 40 V., c. 21, *intra vires* of the Dominion Parliament.

No rules have been made by the Supreme Court of Canada relating specially to appeals from the Maritime Court. They have been on the same footing as other appeals with respect to which no special provisions have been made either by statute or the rules.

Rule 269 of the Maritime Court provides as follows: "269. A party intending to appeal from a decision of the court to the Supreme Court of Canada must give notice of his intention to appeal to the opposite party within fifteen days from the time of pronouncing the decision appealed

from, and otherwise the appeal to be governed by the rules of the Supreme Court."

In *Wigle* v. *Robertson*, respondent moved to quash the appeal on the ground that this notice had not been given, and that therefore the Supreme Court had no jurisdiction to entertain the appeal. The appellant contended that the respondent by taking subsequent proceedings, such as applying for further time to file his factum, had waived the objection to want of notice, the rule relating to a mere matter of procedure which might be so waived, and the serving of the notice not being a condition precedent to the exercise by the Supreme Court of a jurisdiction to hear the appeal. Judgment has not yet been given.

As to the extent of the jurisdiction of the Maritime Court of Ontario in claims for damages done by any ship, whether to person or to property, see *Monaghan* v. *Horn*, 7 Can. S. C. R. 409.

IV. ELECTION APPEALS.

The Supreme and Exchequer Courts Act, section 25, paragraph (*d*) gives jurisdiction in appeals from the court or judge, as provided in "The Dominion Elections Act," but this is clearly an error for "The Dominion Controverted Elections Act."

The sections of "The Dominion Controverted Elections Act," relating to appeals, are as follows:

Appeal to Supreme Court—From judgment on preliminary objection—Proviso—From judgment on question of law or fact.

50. An appeal shall lie to the Supreme Court of Canada under this Act by any party to an election petition who is dissatisfied with the decision of the court or a judge:—

(*a*) From the judgment, rule, order, or decision, of any court or judge on any preliminary objection to an election petition, the allowance of which objection has been final and conclusive and has put an end to such petition, or which objection, if it had been allowed, would have been final and conclusive and have put an end to such petition: Provided always that, unless the court or judge appealed from otherwise orders, an appeal in the last mentioned case shall not operate as a stay of proceedings, nor shall it delay the trial of the petition:

(*b*) From the judgment or decision on any question of law or of fact of the judge who has tried such petition. 38 V., c. 11, s. 48, *part*;—42 V., c. 39, s. 10.

In the *Bellechasse Election Case*, 5 Can. S. C. R. 91, it was held by the Supreme Court, that an Appellate Court in election cases ought not to reverse, on mere matters of fact, the finding of the judge who has tried the petition, unless the court is convinced beyond doubt that his conclusions are erroneous.

In the *Berthier Election Case*, 9 Can. S. C. R. 102, the Supreme Court being of opinion that on the facts the judgment of the court below on certain charges was not clearly wrong, refused to reverse the judgment.

And in the *Montcalm Election Case*, 9 Can. S. C. R. 93, it was again held that the Supreme Court on appeal will not reverse on mere matters of fact, unless the evidence is of such a nature as to convey an irresistible conviction that the judgment is erroneous.

A judgment of the Supreme Court of New Brunswick setting aside an order of a judge rescinding a previous order made, authorizing the withdrawal of the deposit money and removal of the petition off the files, is not a judgment on a preliminary objection within the meaning of the Act. *Gloucester Election Case*, 8 Can. S. C. R. 205.

Nor a judgment of the Supreme Court of Nova Scotia making absolute a rule to set aside an order extending the time for service of a petition, *Kings County (N. S.) Case*, 8 Can. S. C. R. 192.

Nor will an appeal lie from a judgment on a motion made to the court to dismiss an election petition because the trial has not been commenced within six months from the time when such petition has been presented, as required by section 32 of the Dominion Controverted Elections Act. *L'Assomption Case : L'Islet Case*, February, 1888.

But when at the trial an objection was made on this ground to the jurisdiction which the trial judge over ruled, it was held that an appeal lay from his decision. *The Glengarry Case*, March 29th, 1888.

Deposit in case of appeal.

51. The party so desiring to appeal shall, within eight days from the day on which the court or judge has given such decision, deposit with the clerk of the court which gave such decision, or of which the judge who gave such decision is a member, or with the proper officer for receiving moneys paid into such court, at the place where the hearing of the preliminary objections, or where the trial of the petition took place, as the case may be, if in the Province of Quebec, and at the chief office of the said court, if in any other Province, the sum of one hundred dollars as security for costs, and also a further sum of ten dollars as a fee for making up and transmitting the record to the Supreme Court of Canada :

Transmission of record to Supreme Court.

2. Upon such deposit being so made the said clerk or other proper officer shall make up and transmit the record of the case to the registrar of the Supreme Court of Canada, who shall set down the said appeal for hearing by the Supreme Court of Canada at the nearest convenient time and according to any rules of the Supreme Court of Canada in that behalf made under "*The Supreme and Exchequer Courts Act*:"

In the case of other appeals the time for appealing may be extended under special circumstances. (Section 42 Supreme and Exchequer Courts Acts.) But the provisions of this section (42) "shall not apply in the case of an Election petition."

The rules specially regulating appeals in Election cases are 50-55, both inclusive, which refer to the printing of the record and the deposit and printing of the factums. Rule 12 provides for the convening of a special session of the court for the hearing of Election appeals, among others. The usual sessions of the court are regulated by section 20 Supreme and Exchequer Courts Act.

Rules 56 & 57, providing for the payment of fees to the registrar and taxation of costs, are also applicable. The registrar will not enter the appeal for hearing without the preliminary fee of $10 being paid.

There are certain other rules which by the practice of the court have been followed as closely as possible with regard to Election appeals; special mention may be made of Rule 16, providing for the entry of the name of an agent in the agents' book, and of the rules respecting interlocutory applications, Rules 39-43.

APPLICATIONS.

Preliminary proceedings in appeal—Appeal to be heard and determined by Supreme Court.

3. The party so appealing shall, within three days after the said appeal has been so set down as aforesaid or within such further time as the court or judge by whom

such decision appealed from was given or by whom the petition was tried allows, give to the other parties to the said petition affected by such appeal, or the respective attorneys, solicitors or agents by whom such parties were represented on the hearing of such preliminary objections or at the trial of the petition, as the case may be, notice in writing of such appeal having been so set down for hearing as aforesaid, and may in such notice, if he so desires, limit the subject of the said appeal to any special and defined question or questions; and the appeal shall thereupon be heard and determined by the Supreme Court of Canada, which shall pronounce such judgment upon questions of law or of fact, or both, as in the opinion of such court ought to have been given by the court or judge whose decision is appealed from; and the Supreme Court of Canada may make such order as to the money deposited as aforesaid, and as to the costs of the appeal as it thinks just; and in case it appears to the court that any evidence duly tendered at the trial was improperly rejected, the court may cause the witness to be examined before the court or a judge thereof, or upon commission:

In the *North Ontario Election Case*, 3 Can. S. C. R. 374, it was held, that the provision as to notice is imperative and the giving of such notice a condition precedent to the exercise of any jurisdiction by the Supreme Court to hear the appeal. But the judge who tried the petition may extend the time for giving the notice after the expiration of the three days, the power of the judge being a general and exclusive power to be exercised according to sound discretion.

In the *Bellechase Election Case*, 5 Can. S. C. R. 91, in which the judge who tried the petition, subject to an objection to his jurisdiction, dismissed the petition on the ground that he had no jurisdiction, on appeal the Supreme Court reversed his decision and ordered the record to be transmitted to the proper officer of the lower court to have the cause proceeded with according to law and disposed of on the merits; and when the judgment on the merits was appealed from, the Supreme Court held that it had jurisdiction to entertain the appeal.

In addition to the costs of the appeal, provided for by this section, the Supreme Court has full power by section 54 of the Dominion Controverted Elections Act to deal with the costs of the court below. (See *infra.*)

Report to the Speaker—Decision to be final.

4. The registrar shall certify to the Speaker of the House of Commons the judgment and decision of the court upon the several questions as well of fact as of law, upon which the court or judge appealed from might otherwise have determined and certified his decision in pursuance of this Act, in the same manner as the said court or judge should otherwise have done, and with the same effect; and the judgment and decision of the Supreme Court of Canada shall be final. 38 V., c. 11, s. 25, *part, and* s. 48, *part.*

With respect to the finality of the decision of the Supreme Court, it has been decided by the Judicial Committee that no appeal in a Controverted Election case will be entertained by the Privy Council. *Glengarry Case, Kennedy* v. *Purcell*, 7th July, 1888.

The judgment of their Lordships of the Judicial Committee, after stating the facts of the case, proceeds as follows:

"It appears that the decision of the Supreme Court did not turn on the merits of the case, but entirely on questions of procedure, which were three in number. First, whether the time during which parliament was sitting should be computed as part of the six months allowed for the commencement of the trial. Secondly, whether after the expiry of the six months the court has power to extend the time for trial. Thirdly, whether the appellant, not objecting to the enlargement when the order was made, was entitled to object afterwards. On all or some of these questions two out of the five judges who heard the appeal were in favour of the petitioner, but the other three judges decided in favour of Mr. Purcell on all of them.

"It is now urged by the petitioner that inasmuch as the questions decided are important questions of law affecting the construction of the election statutes, and there is good ground for doubts as to the soundness of the decisions, Her Majesty in Council should entertain an appeal. On the other side the importance of the questions is not denied, nor is it denied that the decisions on them are fairly open to argument. But it

is contended, first, that the subject matter is not one with respect to which the prerogative of the crown exists; and secondly, that if the prerogative does exist, it is not proper to exercise it.

"To support the first proposition, the case of *Theberge* v. *Landry*, 2 L. R. Appeal Cases, 102, is relied on. That case arose under the Quebec Elections Act of 1875, by which the jurisdiction to try election petitions was given to the Superior Court, whose decisions were declared "not susceptible of appeal." The petitioner sought to appeal on the merits of the election. The decision of this committee was, not that the prerogative of the crown was taken away by the general prohibition of appeal, but that the whole scheme of handing over to courts of law disputes which the Legislative Assembly had previously decided for itself, showed no intention of creating tribunals with the ordinary incident of an appeal to the crown.

"In the case of *Valin* v. *Langlois*, 5 L. R. Appeal Cases, 115, the petitioner asked for leave to appeal from a decision of the Supreme Court of Canada under the Controverted Elections Act of 1874, which is one of the statutes consolidated by the Act now in question. The ground of appeal was that the Act, being a Dominion Act, was *ultra vires* of the Dominion, in assuming to give the courts in Quebec jurisdiction over elections in Quebec to the Canadian House of Commons. This committee held that there was no ground for any such contention, and dismissed the petition. But it was said that if they had doubted the soundness of the decision below they would have advised Her Majesty to grant leave to appeal. That opinion is now relied on as limiting or contravening the effect of the decision in *Theberge* v. *Landry*.

"Their lordships do not think that for the present purpose any useful or substantial distinction can be taken between the statute which was the subject of decision in *Theberge* v. *Landry*, that which was the subject of decision in *Valin* v. *Langlois*, and those which are now in question. In all three cases there is the broad consideration of the inconvenience of the crown interfering in election matters, and the unlikelihood that the Colonial Legislature should have intended any such result. In all three there is the creation of a special tribunal for the trial of petitions, in the sense that the litigation is not left to follow the course of an ordinary lawsuit, but is subjected to a special procedure and limitations of its own. And in all three there is the same expression of the intention to make the Colonial decision final. But such variance as there is between the two cited cases is only to this extent, that the committee in the latter case must have thought that the question of the existence of the prerogative was still susceptible of argument, when the dispute went to the very root of the validity of a law passed by parliament to take effect in a province. Their opinion on an *ex parte* hearing, and on the sole question

whether or no there should be any further argument on the matter at all, cannot be put higher than that.

"Their Lordships do not find it necessary to give any decision on the abstract question of the existence of the prerogative in this case, because they are satisfied that if it exists it ought not to be exerted in the case before them.

"It is true that the questions are very debateable, and that they affect the administration of the whole law on this subject. But the range of cases affected by them must be very narrow. It is not suggested that in the present Parliament there is a single case except the one under appeal. There can be no other case till fresh elections take place; and if the decisions now given have really misinterpreted the mind of the Legislature, and are calculated to establish rules of procedure less convenient than those intended, the Legislature can at once set the matter right. This peculiarity of the subject matter largely diminishes the force of the consideration, usually a strong one, that the decision complained of affects general questions of law.

"The next observation is that the statutes show throughout a desire to have these matters decided quickly. There are the most obvious reasons for such a desire. The legal duration of a Parliament, is, as their Lordships understand, five years, and its usual duration four years. It is most important that no long time should elapse before the constitution of the body is known. And yet if the Crown is to entertain appeals in such cases, the necessary delays attending such appeals would greatly extend the time of uncertainty which the Legislature has striven to limit.

"Again, the intention to confine the decision locally within the colony itself is just as clear as the intention to get it passed speedily, because it is expressed that the decision of the Supreme Court shall be final. And it seems to their Lordships that there are strong reasons why such matters should be decided within the colony, and why the prerogative of the Crown should not, even if it legally can, be extended to matters over which it had no power, and with which it had no concern, until the Legislative bodies chose to hand over to judicial functionaries that which was formerly settled by themselves. Before advising such an exertion of the prerogative, their Lordships would require to find indications of an intention that the new proceedings should so follow the course of ordinary law as to attract the prerogative. But the indications they do find are of the contrary tendency.

"The result is that their Lordships cannot advise Her Majesty to grant the leave asked, and that the petition must be dismissed with costs."

The following are the sections of the Dominion Controverted Elections Act relating to the certificate of the judge of the court below:

JUDGE'S REPORT.

"43. At the conclusion of the trial the judge shall determine whether the member whose election or return is complained of, or any and what other person, was duly returned or elected, or whether the election was void, and other matters arising out of the petition, and requiring his determination,—and shall, except only in the case of appeal hereinafter mentioned, within four days after the expiration of eight days from the day on which he shall so have given his decision, certify in writing such determination to the Speaker, appending thereto a copy of the notes of the evidence; and the determination thus certified shall be final to all intents and purposes. 37 V., c. 10, s. 29; 38 V., c. 10, s. 3."

"44. When any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition relates, the judge shall, in addition to such certificate, and at the same time, report in writing to the Speaker, as follows:—

(*a.*) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, stating the name of such candidate, and the nature of such corrupt practice;

(*b.*) The names of any persons who have been proved at the trial to have been guilty of any corrupt practice;

(*c.*) Whether corrupt practices have, or whether there is reason to believe that corrupt practices have, extensively prevailed at the election to which the petition relates;

(*d.*) Whether he is of opinion that the inquiry into the circumstances of the election has been rendered incomplete by the action of any of the parties to the petition, and that further inquiry as to whether corrupt practices have extensively prevailed is desirable. 37 V., c. 10, s. 30; 39 V., c. 10, s. 1."

"45. The judge may, at the same time, make a special report to the Speaker as to any matters arising in the course of the trial, an account of which ought, in his judgment, to be submitted to the House of Commons. 37 V., c. 10, s. 31."

Supreme Court may adjudge that costs be paid fully or in part by either party—Recovery of such costs.

54. In appeals under this Act to the Supreme Court of Canada, the said court may adjudge the whole or any part

of the costs in the court below to be paid by either of the parties; and any order directing the payment of such costs shall be certified by the registrar of the Supreme Court of Canada to the court in which the petition was filed, and the same proceedings for the recovery of such costs may thereupon be taken in the last mentioned court as if the order for payment of costs had been made by that court or by the judge before whom the petition was tried. 39 V., c. 26, s. 16.

The usual practice has been to certify the judgment of the Supreme Court to the court below, and to leave to the latter court the enforcement of the payment of the costs. But the court may issue writs to enforce payment of the costs of an election appeal. This was done in the North Ontario election case *(Wheeler* v. *Gibbs)*, but the execution was stayed by Taschereau, J., to permit an application to the court for an amendment of the judgment, to enable the respondent to set-off against the costs of appeal, costs allowed respondent in court below. The amendment was made, and execution stayed by the Court, February, 1881. The payment of interlocutory costs will be enforced by writs of execution issued by the Supreme Court. This was done in the North Ontario election case on the 23rd January, 1880.

A motion to dismiss an election appeal either by an appellant who wishes to discontinue, or by a respondent, should be made to the court. *Soulanges Election case: North York Election case*, Dig. S. C. D. p. 390, No. 54, and p. 391, No. 55. See *ante*, p. 45.

V. APPEALS UNDER "THE WINDING-UP ACT."

See section 25, paragraph (*e*), Supreme and Exchequer Courts Act. The Winding-Up Act is c. 129, R. S. C., and the provisions relating to appeals are the following:

Appeals.

74. Any person dissatisfied with an order or decision of the court or a single judge in any proceeding under this Act may, by leave of a judge of the court, appeal therefrom, if the question to be raised on the appeal involves future rights, or if the order or decision is likely to affect other cases of a similar nature in the winding up proceedings, or if the amount involved in the appeal exceeds five hundred dollars:

2. Such appeal shall lie—

In Ontario, to the Court of Appeal for Ontario;

In Quebec, to the Court of Queen's Bench;

In any of the other Provinces, and in the North-west Territories, to the full court:

In Keewatin.

3. In the District of Keewatin any person dissatisfied with an order or decision of the court or a single judge, in any proceeding under this Act, may, by leave of a judge of the Supreme Court of Canada, appeal therefrom to the Supreme Court of Canada:

Practice—Security on appeal; and time for, limited.

4. All appeals shall be regulated, as far as possible, according to the practice in other cases of the court appealed to; but no such appeal shall be entertained

unless the appellant has, within fourteen days from the rendering of the order or decision, or within such further time as the court appealed from allows, taken proceedings therein to perfect his appeal, nor unless, within the said time, he has made a deposit or given sufficient security, according to the practice of the court, that he will duly prosecute the said appeal, and pay such damages and costs as may be awarded to the respondent. 45 V., c. 23, s. 78, *part*, *and* s. 79; 49 V., c. 25, s. 16.

If not proceeded with appeal may be dismissed.

75. If the party appellant does not proceed with his appeal, according to the law or the rules of practice, as the case may be, the court appealed to, on the application of the respondent, may dismiss the appeal, with or without costs. 45 V., c. 23, s. 80.

Further appeal to Supreme Court.

76. An appeal shall lie to the Supreme Court of Canada, by leave of a judge of the said Supreme Court, from the judgment of the Court of Appeal for Ontario, the Court of Queen's Bench in Quebec, or the full court in any of the other Provinces or in the North-west Territories, as the case may be, if the amount involved in the appeal exceeds two thousand dollars. 45 V., c. 23, s. 78, *part*.

Besides the appellate jurisdiction, the Supreme Court may act under the section following:

Various provincial courts to be auxiliary to one another.

84. The courts of the various Provinces, and the judges of the said courts respectively, shall be auxiliary to one another for the purposes of this Act; and the winding up of the business of the company, or any matter or proceeding relating thereto may be transferred from one court to another with the concurrence, or by the order or orders, of

the two courts, or by an order of the Supreme Court of Canada. 45 V., c. 23, s. 86.

In the Act 45 V., c. 23, from which the foregoing sections 74, 75 & 76 are chiefly taken, the arrangement of the sections is different. The provisions relating to security, time for appealing and dismissal of appeals (now found in sub-section 4, of section 74 and in section 75) were inserted after the section providing for an appeal to the Supreme Court of Canada. By the present arrangement the provisions of the Supreme and Exchequer Courts Act, relating to procedure in appeals generally are applicable to these appeals. But for all such appeals the leave of the Supreme Court or a judge thereof, must be obtained, and in appeals under sub-section 3 of section 74, security must be given according to the practice of the court below, while in other appeals the security may be given in either court. (See section 46 Supreme and Exchequer Courts Act). And a motion to dismiss for not proceeding with an appeal, may be made either to the court or a judge in Chambers. (See section 53, Supreme and Exchequer Courts Act).

An appeal shall lie * * * "if the amount involved in the appeal exceeds $2,000." Nothing is said about an appeal where future rights are involved, or the decision is likely to affect other cases of a similar nature in the winding up proceedings. Under 45 V. c. 23, an appeal would seem to have been allowed in all these cases to the Supreme Court of Canada.

Attention might be called to the different wording used in what may be called the subject-matter limitation imposed in various classes of appeals to the Supreme Court, in section 24, paragraph (*h*), Supreme and Exchequer Courts Act; section 29, Supreme and Exchequer Courts Act; sections 51 & 52 of chapter 16 of 50-51 V., and in the above section 76.

PART III.

SUPREME COURT RULES.

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SUPREME COURT RULES.

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In pursuance of the provisions contained in the 79th section of the 38th Victoria, chapter 11, intituled "An Act to establish a Supreme Court and a Court of Exchequer for the Dominion of Canada," it is ordered that the following rules in respect of the matters hereafter mentioned shall be in force in the Supreme Court of Canada:

By the Revised Statutes of Canada, 38th Victoria, chapter 11, has been repealed. But by the Interpretation Act, section 7, sub-section 50, it is provided that:

"Whenever any 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."

RULE 1.

Filing case.

The first proceeding in appeal in this court shall be the filing in the office of the registrar of a case pursuant to section 29 of the Act, [s. 44. c. 135, R. S. C.,] certified under the seal of the court appealed from.

This rule must be read subject to any provisions giving power to the Supreme Court or a judge thereof to approve of the security, or allow an appeal, or to dismiss an appeal for want of prosecution, or to extend the time for printing and filing case.

For form of certificate, see Appendix, Forms, at page 217.

RULE 2.

Case to contain reasons for judgment.

The case in addition to the proceedings mentioned in the said section 29, [s. 44 of c. 135, R. S. C.] shall invariably contain a transcript of all the opinions or reasons for their judgment delivered by the judges of the court or courts below, or an affidavit that such reasons cannot be procured, with a statement of the efforts made to procure the same.

When the opinions of the judges of the courts below have been already issued in the regular reports the Court of Appeal for Ontario has dispensed with the re-printing of such opinions in the appeal book, which merely contains a reference to the report and page at which such opinions may be found. See Rule 18 of that court. Cases have sometimes been sent to the Supreme Court thus prepared, but this practice is irregular under Rule 2. When it is thought desirable to dispense with printing of the opinions in the case the more regular practice would be to apply in Supreme Court Chambers for an order. The affidavit referred to in this rule should be filed and a copy of it printed in the case. In cases from the Province of Quebec the clerk of appeals frequently certifies that he has applied to the judges for their reasons and has not been furnished with them. This certificate has been accepted in lieu of the affidavit mentioned in this rule.

RULE 3.

Case to contain copy of any order enlarging time.

The case shall also contain a copy of any order which may have been made by the court below or any judge thereof enlarging the time for appealing.

See section 42 of the Act. Orders extending the time for *printing the case* should be obtained from the Supreme Court or Judge thereof.

RULE 4.

Case may be remitted to Court below.

The court, or a judge thereof, may order the case to be remitted to the court below, in order that it may be made more complete by the addition thereto of further matter.

Under the statute, section 44, Supreme and Exchequer Courts Act, the case is to be stated by the parties, or in the event of difference to be settled by the court appealed from or a judge thereof. A party feeling aggrieved by the omission of what he may consider necessary or proper material may apply to a Judge of the Supreme Court in Chambers, on notice, to have the case remitted for correction. The application should not be made in the first instance to the court; *Ætna Ins. Co.* v. *Brodie*, Dig, S. C. D., p. 383, No. 15. Where material has been unnecessarily added, no application to remit is required. The unnecessary matter will be disregarded by the court, and, as a general rule, will not be allowed on taxation when its insertion has been objected to at the proper time.

The judge of the court below when settling the case should not abstain from exercising his judgment as to whether certain material should or should not form part of the case. Where a judge of the court below certified that the examination of one D. was made part of the case *quantum valeat*, the case was remitted to the court below to have it made clear whether the examination did or did not form part of the case; *McCall* v. *Wolff*, Dig. S. C. D., p. 384, No. 16.

The printed case certified to the Registrar of the Supreme Court will be remitted to the court below for correction, if not a correct print of the case settled by the judge. In *Parker* v. *Montreal City Passenger Railway Company*, Dig. S. C. D., p. 385, No. 21, where it appeared that certain papers which a judge of the court below had directed should form part of the case had been incorrectly printed, especially the factum of the respondent in said court, which had been translated, and in which interpolations had been made, the registrar, on application of the respondent, was directed to remit the case to the court below to be corrected.

RULE 5.

Motion to dismiss for delay.

If the appellant does not file his case in appeal with the registrar within one month after the security required by the Act shall be allowed, he shall be considered as not duly prosecuting his appeal, and the respondent may move to dismiss the appeal pursuant to section 41 of the Act, [s. 53, c. 135, R. S. C.]

Section 53 of the Revised Act chapter 135, which provides for the dismissal of an appeal for delay, is as follows:

53. If an appellant unduly delays to prosecute his appeal, or fails to bring the appeal on to be heard at the first session of the Supreme

Court, after the appeal is ripe for hearing, the respondent may, on notice to the appellant, move the Supreme Court, or a judge thereof in chambers, for the dismissal of the appeal; and such order shall thereupon be made as the said court or judge deems just." 38 V., c. 11, s. 41.

See notes to this section at p. 44 *et seq.*

The immediate consequence of failing to file the case with the Registrar of the Supreme Court within the month after security has been allowed, is that the appellant lays himself open to a motion to dismiss for want of prosecution. If therefore the appellant sees that it will be impossible to print his case within the time given by the rule and has been unable to obtain or unwilling to ask the consent of the respondent to any extension of time, he should apply before the expiry of the month, if possible, to the Registrar of the Supreme Court in Chambers, for further delay. The application should be on the usual four clear days notice and be supported by affidavit, setting forth the reasons for making it. See Rules 39, 40, 41 & 42.

Rules 42 and 70 give full power to the court or a judge to enlarge or abridge the time for doing any act, the former rule expressly providing, among other things, for giving further reasonable time for filing the printed case.

A motion to dismiss for want of prosecution should not be made to the court, but in chambers. *Martin* v. *Roy*, Dig. S. C. D., p. 390, No. 53; *The steam propeller St. Magnus*—before the full court, 1887

And the court has refused to interfere with the discretion exercised by a judge in chambers. See *Whitfield* v. *The Merchants' Bank*, Dig. S. C. D., p. 390, No. 51; *Winnipeg* v. *Wright*, 13 Can. S. C. R. 441.

In an election appeal, however, the motion should be made to the court. *North York Election Case*, Dig. S. C. D., p. 391, No. 55; *Charlevoix Election Case*, *Ibid.*, p. 403, No. 99.

It is not a sufficient excuse for not inscribing an appeal for hearing that the respondent has not filed his factum. *Whitfield* v. *The Merchants' Bank*, Dig. S. C. D., p. 390, No. 51.

It is the duty of the appellant's solicitor to prosecute his appeal with all reasonable despatch, and to inscribe it for hearing *ex parte* if the respondent be in default in depositing his factum; and any carelessness or neglect in acquainting himself and complying with the requirements of the rules, may lay him open to the serious penalty of the dismissal of the appeal, or at least to the payment of a considerable amount of costs, that great "instrument of correction in the hands of the court." See *Coté* v. *Stadacona Ass. Co.*, Dig. S. C. D., p. 390, No. 52.

Rule 44, provides that unless an appeal is brought on for hearing by the appellant within one year next after the security shall have been allowed, it shall be held to have been abandoned without any order to dismiss being required, unless the Supreme Court or a judge thereof shall otherwise order.

RULE 6.

Certificate of security given.

The case shall be accompanied by a certificate under the seal of the court below, stating that the appellant has given proper security to the satisfaction of the court whose judgment is appealed from, or of a judge thereof, and setting forth the nature of the security to the amount of five hundred dollars, as required by the thirty-first section of the said Act, and a copy of any bond or other instrument by which security may have been given shall be annexed to the certificate.

In practice a copy of the bond by which security may have been given, is generally printed in the case, but this is unnecessary. A copy certified under the seal of the court below may be forwarded with the case.

The section of the Act relating to the giving of security is number 46. See notes to said section *ante* p. 37.

RULE 7.

Case to be printed and twenty-five copies deposited with registrar.

The case shall be printed by the party appellant, and twenty-five printed copies thereof shall be deposited with the registrar for the use of the judges and officers of the court.

The case as settled between the parties, or by the judge of the court below, is to be printed, but there have been many appeals in which a portion of the printing has been dispensed with, such as pamphlets or other printed documents, books of account, statements, etc.; sometimes evidence which has been printed for use in the court below, although not in the form required by the rules of the Supreme Court, and only a few

copies can be procured. The judges have invariably relaxed the requirements as to printing, when doing so would save large expense, and not cause any serious inconvenience.

But no application should be made to dispense with any part of the printing until the case has been settled, *Bender* v. *Carière*, Dig. S. C. D., p. 384, No. 19; and such an application should be made to a judge of the Supreme Court and not to a judge of the court below.

No provision has been made for the delivery of a printed copy of the case to the respondent, as in the case of factums. In practice this can give very little inconvenience, for the respondent will have in his possession, or can easily procure, a copy of all the material embodied in the case.

In Ontario the Court of Appeal by General Order 68, provides that in addition to the number of copies required for the use of that court, thirty copies are to be deposited with the registrar for the purpose of being delivered, in the event of an appeal to the Supreme Court of Canada, to the party appealing to that court, for use upon such appeal. This does not apply to appeals from the County Courts of Ontario, for in such cases no appeal lies to the Supreme Court.

As to what the case should contain, see section 44 of the Act, *ante* p. 34, and also Rule 2 and notes thereon.

RULE 8.

Form of case.

The case shall be in demy quarto form. It shall be printed on paper of good quality, and on one side of the paper only, and the type shall be small pica leaded, and the size of the case shall be eleven inches by eight and one-half inches, and every tenth line shall be numbered in the margin. An index to the pleadings, depositions, and other principal matters shall be added.

RULE 9.

Case not to be filed unless rules complied with.

The registrar shall not file the case without the leave of the court or a judge, if the foregoing order has not been complied with, nor if it shall appear that the press has not

been properly corrected, and no costs shall be taxed for any case not prepared in accordance with this order.

The case is to be printed so as to procure a certain degree of uniformity, and all that is required is a substantial compliance with Rule 8. *May* v. *McArthur*, Dig. S. C. D., p. 384, No. 20.

The numbering may be from the top of each page.

For the purpose of making notes it is more convenient to have the book with the printed pages to the left.

By the tariff, schedule D., the registrar is authorized to tax reasonable charges for disbursements necessarily incurred in proceedings in appeal; and by Rule 81, amending the tariff, he may tax "for engrossing for printer copy of case as settled, when such engrossed copy is necessarily and properly required, per folio of 100 words, 10 cents; for correcting and superintending printing 100 words, 5 cents."

It is the duty of the appellant to avoid unnecessary expense, and the costs of any printed material not properly required, or of printing done in an unnecessarily expensive style, will be disallowed on taxation.

The printing should average from forty to forty-seven lines to the page, and not be uselessly leaded or paragraphed. The price paid should be a reasonable price, and the affidavit of disbursements, in addition to stating that the printing charges have been paid, should state that such charges are usual and reasonable in the locality in which the work has been done.

The index should be sufficient to enable any document to be easily found. It is objectionable to refer to an exhibit under its letter merely, without identifying it more fully. As a rule it is more convenient to have the index at the beginning of the case.

RULE 10.

Certified copies of original documents and exhibits to be deposited with Registrar.

Together with the case, certified copies of all original documents and exhibits used in evidence in the court of first instance, are to be deposited with the registrar, unless their production shall be dispensed with by order of a judge of this court; but the court or a judge may order that all or any of the originals shall be transmitted by the officer having the custody thereof to the registrar of this

court, in which case the appellant shall pay the postage for such transmission.

Exhibits which have a bearing upon the question at issue in the appeal should form part of the case, and be printed. When this has been done, there is no necessity to send certified copies. Sometimes it is sufficient to print extracts from the exhibits. Whenever it is desirable that the original exhibits should be inspected by the judges of the Supreme Court, an order for the transmission of such exhibits should be obtained from a judge or the registrar of that court in chambers.

RULE 11.

[As amended by Rule 80.]

Notice of hearing of appeal.

After the filing of the case, a notice of the hearing of the appeal shall be given by the appellant for the next following session of the court as fixed by the Act, or as specially convened for hearing appeals according to the provisions thereof, if sufficient time shall intervene for that purpose, and if between the filing of the case and the first day of the next ensuing session there shall not be sufficient time to enable the appellant to serve the notice as hereinafter prescribed, then such notice of hearing shall be given for the session following the then next ensuing session.

Rule 13 regulates the form of the notice of hearing.

By Rule 14, as amended by Rule 80, the notice of hearing shall be served at least fifteen days before the first day of the session at which the appeal is to be heard. Rule 15, as amended by Rule 80, provides for the manner of service.

RULE 12.

Special notice convening court, form of.

The notice convening the court under section 14 of the Act, [ss. 21 and 22, c. 135, R. S. C.] for the purpose of hearing election or criminal appeals, or appeals in matters of *habeas corpus*, or for other purposes, shall, pursuant

to the directions of the chief justice or senior puisné judge, as the case may be, be published by the registrar in the *Canada Gazette*, and shall be inserted therein for such time before the day appointed for such special session as the said chief justice or senior puisné judge may direct, and may be in the form given in Schedule A, to these rules appended.

RULE 13.

Form of notice of hearing.

The notice of hearing may be in the form given in Schedule B to these Rules appended.

When an appeal is heard *ex parte*, the court requires an affidavit proving service of notice of hearing. Dig. S. C. D., p. 393, No. 69.

RULE 14.

[As amended by Rule 80.]

When to be served.

The notice of hearing shall be served at least 15 days before the first day of the session at which the appeal is to be heard.

RULE 15

[As amended by Rule 80.]

How notice of hearing to be served.

Such notice shall be served on the attorney or solicitor who shall have represented the respondent in the court below, at his usual place of business, or on the booked agent, or at the elected domicil of such attorney or solicitor at the City of Ottawa, and if such attorney or solicitor shall have no booked agent or elected domicil at the City of Ottawa, the notice may be served by affixing the same in some con-

spicuous place in the office of the Registrar, and mailing on the same day a copy thereof prepaid to the address of such attorney or solicitor.

See next Rule respecting "The Agent's Book."

See Rule 40 as to service of notices of motion.

And see Rules 20 and 21 as to service of notice of hearing on respondent who appears in person.

RULE 16.

"The Agent's Book."

There shall be kept in the office of the Registrar of this court a book to be called "The Agent's Book," in which all advocates, solicitors, attorneys and proctors practising in the said Supreme Court may enter the name of an agent (such agent being himself a person entitled to practise in the said court), at the said City of Ottawa, or elect a domicil at the said city.

It is provided by the Supreme and Exchequer Courts Act, R. S. C. c. 135, as amended by 50-51 V., c. 16, as follows:

"16. All persons who are barristers or advocates in any of the Provinces, may practise as barristers, advocates and counsel in the Supreme Court."

"17. All persons who are attorneys or solicitors of the superior courts in any of the Provinces, may practise as attorneys, solicitors and proctors in the Supreme Court."

"18. All persons who may practise as barristers, advocates, counsel, attorneys, solicitors or proctors in the Supreme Court, shall be officers of such court."

In *Wallace* v. *Burkner*, the Supreme Court intimated that conducting business with the Registrar's office by correspondence is a highly irregular practice. Practitioners should understand the importance of appointing an agent early in the course of an appeal. As soon as a case is transmitted to the Supreme Court the appellant's solicitor should authorize some practitioner in Ottawa, to act as agent and enter his name as such in the "agent's book." The authority may be a general one to act in all appeals, or may be limited to any particular appeal.

The authority must be in writing and filed in the Registrar's office. No special form is required. The following is sufficient:

"I hereby authorize you to enter your name as my agent in the 'agent's book' of the Supreme Court of Canada, and to act as such agent in all appeals to that court in which I may be concerned [or in the following appeal, viz.] Dated etc."

The authority may be revoked by a subsequent one and a new entry in the book.

By Rule 82, it is ordered that an allowance shall be taxed by the Registrar to the duly entered agent in any appeal, in the discretion of the Registrar to $20.

Any neglect to appoint an agent, or any neglect by an agent when appointed, may seriously prejudice the rights of the parties. An agent should keep a general supervision over the procedure in an appeal, see that the appeal is duly entered and the fee paid on entering it, attend to the depositing of the factum and the inscribing of the appeal, keep his principal advised with reference to all interlocutory applications, be present in court to hear judgment and notify his principal of the result, take out and serve on the agent of the other party an appointment to tax costs and settle the minutes of the judgment, and attend the taxation and settlement. Sometimes questions arise on the settlement of the minutes requiring a thorough acquaintance on the part of the agent with the nature of the appeal and the judgment. It is not very satisfactory to find after a judgment has been entered that an important provision has been omitted necessitating an application to the full court at a considerable expense.

RULE 17.

Suggestion by respondent who appears in person.

In case any respondent who may have been represented by attorney or solicitor in the court below, shall desire to appear in person in the appeal, he shall immediately after the allowance by the court appealed from, or a judge thereof, of the security required by the Act, file with the registrar a suggestion in the form following:

"A. *v.* B.

"I, A. B., intend to appear in person in this appeal.

(Signed), A. B."

When a respondent conducts an appeal in person he should be careful to comply with Rule 20 and elect some domicil or place at the city of Ottawa at which all notices and papers may be served upon him, otherwise by Rule 21 the notice of hearing may be served upon him by being affixed in some conspicuous place in the office of the registrar, and by Rule 40 service of all notices of motion may be made on him in the same way.

When a party to an appeal appears in person he will be entitled to tax, if successful, and granted costs, the usual costs between party and party other than counsel fees. A respondent who is an advocate and who has argued the appeal in person cannot tax counsel fees. *Montmorency Election Case*, (*Valin* v. *Langlois*), Dig. S. C. D., p. 387, No. 33.

RULE 18.

If no suggestion filed.

If no such suggestion shall be filed, and until an order shall have been obtained as hereinafter provided for a change of solicitor or attorney, the solicitor or attorney who appeared for any party respondent in the court below shall be deemed to be his solicitor or attorney in the appeal to this court.

RULE 19.

Suggestion by respondent who elects to appear by attorney.

When a respondent has appeared in person in the court below he may elect to appear by attorney or solicitor in the appeal, in which case the attorney or solicitor shall file a suggestion to that effect in the office of the registrar, and thereafter the notice of hearing and all other papers are to be served on such attorney or solicitor as hereinbefore provided.

RULE 20.

Election of domicil by respondent who appears in person.

A respondent who appears in person may, by a suggestion filed in the registrar's office, elect some domicil or place at the city of Ottawa, at which all notices and papers may be served upon him, in which case service at such place of the notice of hearing and all other notices and papers shall be deemed good service on the respondent.

RULE 21.

Service when respondent appears in person without electing domicil.

In case the respondent, who shall have appeared in person in the court appealed from, or who shall have filed a suggestion pursuant to Rule 17, shall not, before service, have elected a domicil at the city of Ottawa, the notice of hearing may be served by affixing the same in some conspicuous place in the office of the registrar.

Rules 17, 18, 19, 20 & 21, all refer only to a respondent, and provide for the manner in which he may appear in an appeal. No provision has been made for the filing of a suggestion by an appellant who wishes to appear in person, nor for his electing to appear by solicitor in the Supreme Court when he has appeared in person in the court below, nor for election of domicil by an appellant who wishes to appear in person. But an appellant can prosecute an appeal in person, or by the solicitor who appeared for him in the cause below, or he may instruct some other solicitor to prosecute the appeal—and the rule as to entering an agent would of course apply to any solicitor so acting for the appellant. Besides, Rule 40 which regulates the mode of serving notices of motion is applicable as well to an appellant as a respondent, and from this rule it may be inferred that an appellant appearing in person may elect a domicil in the city of Ottawa.

RULE 22.

Changing attorney or solicitor.

Any party to an appeal may on an *ex parte* application to a judge obtain an order to change his attorney or solicitor, and after service of such order on the opposite party, all services of notices and other papers are to be made on the new attorney or solicitor.

One attorney's name only should appear on record. In an application to change the name of solicitor, it was shown that Messrs. A. and B. appeared on the case as solicitors and that A. had died. It was desired to have the name of B. alone inserted as solicitor. Application refused by the Chief Justice of the Supreme Court as unnecessary; *Gilmour & Rankin* v. *Bull*, 1 Kerr, N. B., referred to. *The Exchange Bank* v. *Springer*, 24th February, 1887.

FACTUMS.

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RULE 23.

[As amended by Rule 80.]

Factums to be deposited with registrar.

At least fifteen days before the first day of the session at which the appeal is to be heard, the parties appellant and respondent shall each deposit with the registrar, for the use of the court and its officers, twenty-five copies of his factum or points for argument in appeal.

RULE 24.

What to contain.

The factum or points for argument in appeal shall contain a concise statement of the facts, and of the points of law intended to be relied on, and of the arguments and authorities to be urged and cited at the hearing, arranged under the appropriate heads.

RULE 25.

How to be printed.

The factum or points for argument in appeal shall be printed in the same form and manner as hereinbefore provided for with regard to the case in appeal, and shall not be received by the registrar unless the requirements hereinbefore contained, as regards the case, are all complied with.

RULE 26.

Motion by respondent to dismiss appeal on ground of delay in filing factum.

If the appellant does not deposit his factum or points for argument in appeal within the time limited by Order 23, the respondent shall be at liberty to move to dismiss the appeal on the ground of undue delay, as provided for by section 41 of the Act, [s. 53, c. 135, R. S. C.]

RULE 27.

Appellant may inscribe ex parte if factum not filed.

If the respondent fails to deposit his factum or points for argument in appeal within the said prescribed period, the appellant may set down or inscribe the cause for hearing *ex parte*.

See Rule 31.

RULE 28.

Setting aside inscription ex parte.

Such setting down or inscription *ex parte* may be set aside or discharged upon an application to a Judge in Chambers sufficiently supported by affidavits.

RULE 29.

Registrar to seal up factums first deposited.

The factum or points for argument in appeal first deposited with the registrar shall be kept by him under seal, and shall in no case be communicated to the opposite party until the latter shall himself bring in and deposit his own factum or points.

RULE 30.

Interchange of factums.

So soon as both parties shall have deposited their said factum or points for argument in appeal, each party shall, at the request of the other, deliver to him three copies of his said factum or points.

Rule 23, as originally passed, required that the factums should be deposited at least one month before the first day of the session at which the appeal was to be heard. By Rule 80 the time was altered and fixed at fifteen days.

Parties should bear in mind that these rules respecting factums have been passed for the convenience of the court. They must be strictly complied with; *Lord* v. *Davidson*, Dig. S. C. D. p. 392, No. 63: and cannot be waived by consent of parties; *Coté* v. *Stadacona Assur. Co.*, Dig. S. C. D. p. 391, No. 60. The factum should be as complete as possible, but the court has never refused leave to counsel to hand in for the use of the judges a printed list of authorities cited at the hearing not already mentioned in the factum. An additional argumentative factum is never, or very rarely received, and would not be accepted by the registrar for distribution among the judges without special leave of the court. The additional list of authorities should be printed and copies sent to the registrar as soon as possible after the argument of the appeal. The factum should not contain irrelevant matter, or reproduce documents already printed in the case, when a reference to them will answer the purpose.

The facts of the case and points for argument should be concisely and yet completely set out. In one case when a point was raised at the hearing which was not in the factum, and the respondent objected that he was not prepared to argue it, the court adjourned the hearing for a week; *Western Counties Ry. Co.* v. *Windsor & Annapolis Ry. Co.*, Dig. S. C. D. p. 391, No. 58. Any improper reflections upon the conduct of the judges of the courts below will be ordered to be struck out and subject the solicitor to the censure of the court and the loss of his costs; *Wallace* v. *Souther*, Dig. S. C. D. p. 391, No. 56; *Vernon* v. *Oliver*, *Ibid.* p. 391, No. 57.

Objections to a factum as containing unnecessary matter may be urged at the hearing; *Coleman* v. *Miller*, Dig. S. C. D. p. 391, No. 61; or may be urged before the registrar on taxation.

The form and manner of printing must be the same as those for the case, see Rule 8; and the registrar, by Rule 25, is directed not to receive the factum unless these requirements have been complied with.

Default on the part of the respondent in depositing a factum does not justify the appellant in neglecting to deposit his, or relieve him from the risk of a motion to dismiss under Rule 26; *Whitfield* v. *The Merchants' Bank*, Dig. S. C. D. p. 390, No. 51. It is the duty of the appellant to prosecute his appeal with all reasonable despatch and in strict conformity with the requirements of the statute and rules. If the respondent is in default, the appeal is inscribed *ex parte*, and the registrar is not at liberty to inscribe in any other way. The word "may" in Rule 27, therefore means "must," if the appellant inscribes the appeal. Rule 28 provides a mode of relief in a proper case against this inscription *ex parte*.

In certain circumstances the court has dispensed with an oral argument of the appeal, and allowed the case to be submitted on the factums. See Dig. S. C. D. p. 392, Nos. 64-67.

No factums are required in criminal appeals, nor in *habeas corpus* appeals—Rule 47. In elections appeals a factum must be deposited as in ordinary appeals—Rule 53; but only three days before the session—Rule 54. In a proper case an order may be obtained dispensing with a factum in these appeals—Rule 55.

Rule 63, as amended by Rule 80, provides for the depositing of factums in a cross appeal, the time within which such factums must be deposited, and the interchange of such factums between the parties.

Rule 64 provides for the translation of a factum, if required by a judge. There has been no case in which this has been required.

INSCRIPTION OF APPEAL.

RULE 31.

[As amended by Rule 80.]

Registrar to inscribe appeals for hearing.

Appeals shall be set down or inscribed for hearing in a book to be kept for that purpose by the registrar at least fourteen days before the first day of the session of the court fixed for the hearing of the appeal. But no appeal shall be so inscribed which shall not have been filed twenty clear days before said first day of said session, without the leave of the court or a judge.

It is the duty of the appellant to inscribe the appeal. He cannot inscribe if the "case" has not been filed twenty clear days before the first day of the session, as provided by the latter part of this rule, nor unless his own factum has been deposited within the time fixed by Rule 23, nor until the time allowed by that rule has passed, leaving the respondent in default.

By the statute, Supreme and Exchequer Courts Act, section 20, the regular sessions always begin on a Tuesday. The case therefore should be filed not later than the third Tuesday preceding the opening of the session (20 clear days). The factums, under Rule 23, should be deposited not later than the third Saturday preceding the opening of the session, and the appeal should be inscribed on the third Monday preceding,—that is the Monday following the last day for depositing the factums. If the respondent has failed to deposit his factum the appeal must be inscribed for hearing *ex parte*. This inscription *ex parte* can only be vacated on application supported by affidavit accounting for the delay. A mere consent on the part of the appellant or his solicitor would not be sufficient. See Rules 27 and 28.

On the third Monday preceding the first day of the session, assuming the session to be a regular one beginning on a Tuesday, the agent for the appellant should attend the registrar's office, write out a præcipe for a search, to satisfy himself that the "case" has been filed twenty clear days before the first day of the session, and to ascertain whether the respondent's factum has been deposited or not. If the case has been

regularly filed, the agent can then file with the registrar a præcipe requesting him to inscribe the appeal.

The appeal may be inscribed at any time, provided the factums of both parties have been filed, and the case filed within the proper time. If the appellant wishes to inscribe before the time has expired for depositing the factums, he should not neglect to make a search before filing with the registrar a request to inscribe, for if the case has not been regularly filed, or if the factum of respondent has not been deposited, the request will not be complied with, and unless another request be made when the appeal is ready for inscription, the appellant may find himself open to a motion to dismiss for not having duly inscribed his appeal.

The respondent cannot inscribe the appeal, even though the appellant make default in inscribing. His remedy is by motion to dismiss for want of prosecution. See section 53 of the Supreme and Exchequer Courts Act, and notes thereon, and Rule 26 and notes.

There are special rules relating to the inscription of election appeals, exchequer appeals, criminal appeals, and appeals in matters of *habeas corpus*.

1. As to election appeals. See section 51, sub-section 2 of the Dominion Controverted Elections Act and notes thereon, *ante* p. 84. This section provides that an election appeal, after the transmission of the record by the clerk or other proper officer of the court below, shall be set down by the registrar of the Supreme Court for hearing at the nearest convenient time, and according to any rules of the Supreme Court of Canada in that behalf. The only rules of the Supreme Court directly affecting the inscription are the one requiring a fee of $10 to be paid on entering every appeal, and the rules relating to the printing of the record and the depositing of factums (51-54). If the fee be paid in time to enable the registrar to have the record printed and to enable the factums to be deposited within the time specified, the appeal will be immediately inscribed by the registrar for the ensuing session.

2. As to exchequer appeals. By section 51 of chapter 16 of 50-51 V., it is provided that after the deposit of $50 by way of security for costs, or filing of notice of intention to appeal on behalf of the crown, section 53, the registrar shall set the appeal down for hearing before the Supreme Court on the first day of the next session.

3. As to criminal appeals and appeals in matters of *habeas corpus*. These may be set down for hearing as soon as the certified written case mentioned in Rule 47, has been received by the registrar, provided the time limit specified in Rule 48 does not interfere. In that event an application may be made to a judge, or to the court if in session, for special leave to inscribe.

Election appeals take precedence on the inscription list. On special application criminal appeals have been given an early hearing during the session. Exchequer appeals are placed last on the list.

HEARING.

RULE 32.

Counsel at hearing.

No more than two counsel on each side shall be heard on any appeal, and but one counsel shall be heard in reply.

In some cases the court has relaxed this rule and heard more than two counsel:—*e.g.* where intricate questions requiring a consideration of the law of both the Provinces of Ontario and Quebec have been raised. Dig. S. C. D. p. 388, Nos. 40, 41 & 42. And where in an appeal between private suitors, the validity of an Act of the Provincial Legislature has been questioned, the Attorney-General of the Province has been heard. Dig. S. C. D. p. 388, No. 39. The fact of there being a cross appeal is not in itself sufficient ground to cause the court to depart from its rule. Dig. S. C. D. p. 388, No. 41.

The counsel for the appellant are first heard, then the counsel for respondent, and one of the counsel for the appellant replies.

No rule has been laid down as to whether senior or junior counsel should first address the court. In cases from the Province of Quebec, it is not unusual for the junior counsel to speak first and then the senior counsel. In cases from the other provinces the senior counsel first addresses the court and is followed by his junior.

Any one attacking the validity of a statute should begin, as all statutes should *primâ facie* be considered within the jurisdiction of the legislature passing them. Dig. S. C. D. p. 388, Nos. 43 and 44.

When the question before the court was whether the Canada Temperance Act, 1878, section 6, had been complied with, and whether a proclamation should issue under section 7, the court directed the parties to begin who sought to sustain the affirmative. Dig. S. C. D. p. 388, No. 45.

The court refused to hear counsel residing in the State of New York. Dig. S. C. D. p. 389, No. 47.

RULE 33.

Postponement of hearing.

The court may in its discretion postpone the hearing until any future day during the same session, or at any following session.

The power of altering the order of hearing appeals is reserved to the court by section 58 of the Supreme and Exchequer Courts Act. This applies only to changing the order of the list for the session at the time being held. The above rule goes further and provides for the postponement of an appeal to any following session. If both parties consent to the postponement of the hearing of an appeal on the list, counsel can either notify the court when the appeal is called, or inform the registrar in writing of their wish to withdraw the appeal, and the registrar will inform the court when the appeal is called. As a rule when an appeal is merely withdrawn it should be re-inscribed for hearing by the appellant on the usual præcipe filed with the registrar. When the court directs an appeal to stand for hearing at a subsequent session, no re-inscription is required, as the registrar will place the appeal on the list, in accordance with the direction of the Court.

If the case does not contain the formal judgment of the court below, or the reasons of the judges of the courts below, or affidavit required by Rule 2, that such reasons could not be procured, or a proper index, or is in any other respect imperfect, the court may direct the postponement of the hearing. Dig. S. C. D. p. 383, No. 11; *Lewin* v. *Howe*, February session, 1888.

RULE 34.

Default by parties in attending hearing.

Appeals shall be heard in the order in which they have been set down, and if either party neglect to appear at the proper day to support or resist the appeal, the court may hear the other party, and may give judgment without the intervention of the party so neglecting to appear, or may postpone the hearing upon such terms as to payment of costs or otherwise as the court shall direct.

If neither party be represented when the appeal is called for hearing, it will be struck out of the list. If the appellant be not represented and

counsel for respondent ask for the dismissal of the appeal, it will be dismissed with costs. Dig. S. C. D. p. 389, No. 50. If respondent's counsel, instead of asking for dismissal of the appeal, asks for the postponement of the hearing to the following session, the request will usually be granted.

If respondent be not represented, counsel for appellant may be heard *ex parte*, or may ask for the postponement of the hearing.

RULE 35.

How orders to be signed and dated.

All orders of this court in cases of appeal shall bear date on the day of the judgment or decision being pronounced, and shall be signed by the registrar.

This rule refers to orders of the court. An order made by a Judge in Chambers is signed by the judge. And orders made by the registrar sitting as a Judge in Chambers, are signed by the registrar– Rule 83.

When one of the parties has died between the hearing and pronouncing of judgment, the court, on application, may direct its order to be dated and entered *nunc pro tunc*, as of the day of hearing. Dig. S. C. D. p. 396, Nos. 84-85; p. 397, No. 86.

Even after the final judgment has been signed and entered and transmitted to the court below, the Supreme Court has power to amend such judgment, and will do so if it is clear that by oversight or mistake an error has occurred. *Rattray* v. *Young*, Dig. S. C. D. p. 400, No. 92.

When a judgment is amended it will be amended to read *nunc pro tunc*. Dig. S. C. D. p. 397, Nos. 87 and 91.

ADDING PARTIES TO THE APPEAL.

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RULE 36.

Adding parties by suggestion.

In any case not already provided for by the Act, in which it becomes essential to make an additional party to the appeal, either as appellant or respondent, and whether such proceeding becomes necessary in consequence of the

death or insolvency of any original party, or from any other cause, such additional party may be added to the appeal by filing a suggestion as nearly as may be in the form provided for by section 43 of the Act, [s. 55, c. 135, R. S. C.]

RULE 37.

Suggestion may be set aside.

The suggestion referred to in the next preceding rule may be set aside, on motion, by the court or a judge thereof.

RULE 38.

Determining questions of fact arising on motion.

Upon any such motion, the court or a judge thereof may, in their or his discretion, direct evidence to be taken before a proper officer for that purpose, or may direct that the parties shall proceed in the proper court for that purpose to have any question tried and determined, and in such case all proceedings in appeal may be stayed until after the trial and determination of the said question.

These rules supplement the provisions of sections 54 to 57 of the Supreme and Exchequer Courts Act, see *ante*, pp. 46 and 47 and notes.

MOTIONS.

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RULE 39.

Motions.

All interlocutory applications in appeals shall be made by motion, supported by affidavit to be filed in the office of the registrar before the notice of motion is served. The notice of motion shall be served at least four clear days before the time of hearing.

RULE 40.

Notice of motion, how served.

Such notice of motion may be served upon the solicitor or attorney of the opposite party by delivering a copy thereof to the booked agent, or at the elected domicil of such solicitor or attorney, to whom it is addressed, at the City of Ottawa. If the solicitor or attorney has no booked agent, or has elected no domicil at the City of Ottawa, or if a party to be served with notice of motion has not elected a domicil at the City of Ottawa, such notice may be served by affixing a copy thereof in some conspicuous place in the office of the registrar of this court.

RULE 41.

Affidavits in support of motion.

Service of a notice of motion shall be accompanied by copies of affidavits filed in support of the motion.

These rules should be followed by Rule 43, which provides that "motions to be made before the court are to be set down in a list or paper, and are to be called on each morning of the session before the hearing of appeals is proceeded with."

Although under Rule 46 these rules as to motions do not apply to criminal appeals, nor to appeals in matters of *habeas corpus*, and under Rule 50 do not apply to election appeals, yet the practice of the court has been the same with respect to motions in all classes of appeals, so far at least as Rules 39, 41 and 43, lay down the procedure.

Rule 40, shews the importance of appointing an agent or electing a domicil. See Rule 16 and notes. *Ex abundanti cautelâ*, in addition to effecting service in the mode pointed out by Rule 40, a copy of the papers should be mailed to, or otherwise served on the solicitor of the opposite party. This should invariably be done in election, criminal or *habeas corpus* appeals.

Affidavits used in reply are filed in the registrar's office after being read.

RULE 42.

Giving further time.

Upon application supported by affidavit, and after notice to the opposite party, the court or a judge thereof may give further reasonable time for filing the printed case, depositing the printed factum or points of either party, and setting down or inscribing the appeal for hearing, as required by the foregoing rules.

This is a special rule governing the extension of time for doing certain specified acts therein mentioned. A more general power for extending or abridging the time for "doing any act or taking any proceeding" is given by Rule 70.

An application under Rule 42, should not be made merely on consent. Some good and substantial reason should be shewn by affidavit for asking the indulgence desired. The time limit laid down by the rules for doing any of the acts referred to in Rule 42, has been fixed after full consideration, as the most reasonable and convenient for both the judges and the parties, and will not be readily extended without very strong grounds being shewn. As to the time within which the case should be filed, see Rules 5 & 31. As to depositing factums, see Rule 23; and as to inscribing, see Rule 31.

RULE 43.

Setting down motions.

Motions to be made before the court are to be set down in a list or paper, and are to be called on each morning of the session before the hearing of appeals is proceeded with.

The solicitor or agent for the party on whose behalf a motion is to be made before the court should attend at the registrar's office on the morning of the day when the motion is to be brought on for hearing and put it on the list. This list is placed before the Chief Justice, who calls the motions in the order in which they are set down. See Rules 39, 40 & 41 as to motions generally.

RULE 44.

Appeal abandoned by delay.

Unless the appeal is brought on for hearing by the appellant within one year next after the security shall have been allowed, it shall be held to have been abandoned without any order to dismiss being required, unless the court or a judge thereof shall otherwise order.

RULE 45.

Rules applicable to exchequer appeals.

The foregoing rules shall be applicable to appeals from the Exchequer Court of Canada, except in so far as the Act has otherwise provided.

See chapter 16 of 50-51 V., ss. 51, 52 and 53, *ante* p. 77.

These sections effect a few changes in the procedure relating to exchequer appeals :

1. The security is different both in amount and manner of giving it. The amount is $50, instead of $500, as in ordinary appeals, although no good reason can be given why there should be this difference, exchequer appeals, as a rule, being rather more costly than others. The security is given by depositing the amount with the Registrar of the Supreme Court. If the appeal be on behalf of the Crown no deposit is required, a notice filed with the registrar taking its place.

2. The time within which security must be given is different. In ordinary appeals sixty days are allowed within which to give the security ; section 40 of chapter 135 Revised Statutes Canada, as amended by Schedule (A) of chapter 16 of 50-51 V. In exchequer appeals, security must be given within thirty days.

3. The appeal has to be inscribed by the registrar of the Supreme Court for the next session as soon as the security is given. Therefore Rule 31 is not applicable to such an appeal.

4. Notice of hearing must be given within ten days after the deposit ; and the notice may limit the appeal to any defined question or questions. Rule 11 provides for notice of hearing in ordinary appeals.

In other respects the procedure in exchequer appeals is the same as that in ordinary appeals.

RULES APPLICABLE TO CRIMINAL APPEALS AND APPEALS IN MATTERS OF HABEAS CORPUS.

RULE 46.

Rules not applicable to criminal appeals, nor habeas corpus.

The foregoing rules shall not, except as hereinbefore provided, apply to criminal appeals nor to appeals in matters of *habeas corpus*.

RULE 47.

Case in criminal appeals and habeas corpus.

In the cases mentioned in the next preceding rule, no printed case shall be required, and no factum or points for argument in appeal need be deposited with the registrar, but such appeals may be heard on a written case, certified under the seal of the court appealed from, and which case shall contain all judgments and opinions pronounced in the court below.

RULE 48.

When case to be filed.

In criminal appeals, and in appeals in cases of *habeas corpus*, and unless the court or a judge shall otherwise order, the case must be filed as follows:

(1) In appeals from any of the Provinces other than British Columbia, at least one month before the first day of the session at which it is set down to be heard.

(2) In appeals from British Columbia, at least two months before the said day.

RULE 49.

Notice of hearing in criminal appeals and in appeals in matters of habeas corpus.

In cases of criminal appeals and appeals in matters of *habeas corpus*, notice of hearing shall be served the respective times hereinafter fixed before the first day of the general or special session at which the same is appointed to be heard, that is to say:

(1) In appeals from Ontario and Quebec, two weeks.

(2) In appeals from Nova Scotia, New Brunswick and Prince Edward Island, three weeks.

(3) In appeals from Manitoba, one month.

(4) In appeals from British Columbia, six weeks.

The sections of the Supreme and Exchequer Courts Act specially applicable to *habeas corpus* appeals are 32, 33, 34 & 35. Criminal appeals are governed by chapter 50 of 50-51 V., the provisions of which were brought into force on the 1st October, 1887, by proclamation issued in the *Canada Gazette* and dated the 28th day of September, 1887.

Both with regard to appeals in matters of *habeas corpus* and criminal appeals the intention of the Legislature appears to have been that these appeals should be heard promptly. Section 35 of the Supreme and and Exchequer Courts Act says: "An appeal to the Supreme Court in any *habeas corpus* matter shall be heard at an early day, whether in or out of the prescribed sessions of the court."

And with respect to criminal appeals sub-section 2, of section 268 of the Criminal Proceedure Act as substituted by section 1 of chapter 50 of 50-51 V., for the original section, provides: "Unless such appeal is brought on for hearing by the appellant at the session of the Supreme Court, during which such affirmance [of the conviction] takes place or the session next thereafter, if the said court is not then in session, the appeal shall be held to have been abandoned, unless otherwise ordered by the Supreme Court."

The delays specified in Rules 48 and 49, do not seem to accord with the spirit of these sections. But in practice the court has invariably shewn itself ready to expedite such appeals, by shortening the delays to the utmost reasonable extent and giving such appeals precedence on the list for hearing, upon application made.

ELECTION APPEALS.

RULE 50.

Preceding rules not applicable in election cases.

The foregoing rules are not to apply to appeals in controverted election cases.

Notwithstanding this rule, the practice adopted by the court in election appeals has been similar in many respects to that laid down for ordinary appeals. The same procedure has been followed as regards agents and their appointment, the election of domicil, motions in chambers and before the court, the signing and dating of orders, the number of counsel to be heard. Rule 12 is by its terms applicable to election as well as other appeals; and by Rules 53 and 54, the rules regulating the printing and interchange of factums (25 & 30) are made applicable to election appeals.

RULE 51.

Printing record in election appeals.

In such election appeals the party appellant shall deposit with the registrar such sum as shall be required for printing the record, or so much thereof as a judge may direct to be printed, at the rate of thirty cents per folio of one hundred words.

It should be borne in mind by the appellant that printing an election record is a work of time. In ordinary appeals the court has considered it reasonable to give one month for printing the case, and this time has been frequently extended. As a rule the case in an ordinary appeal is much shorter than the record in an election appeal.

Therefore the deposit should be made as soon as possible after the appeal has been entered and inscribed. This will be done by the registrar immediately upon the usual fee of $10 being paid. If it is intended to limit the printing to be done (see Rule 55) an application should be made at an early day, and the registrar put in a position to proceed with the printing without delay. The 30c. a folio has usually been sufficient to cover the cost of printing. Any surplus is returned to the appellant, together with the sum (if any) paid by the respondent under Rule 52.

RULE 52.

[As amended by Rule 78.]

Copies of record.

The registrar shall cause twenty-five copies of the said record to be printed, in the same form as hereinbefore provided for the case in ordinary appeals, for the use of the court and its officers, and also twenty additional copies, ten of which are, upon his request, to be delivered to the appellant free of charge, and ten to the respondent upon payment of [his due proportion of the cost of printing the same, such proportion to be fixed by the registrar, and the amount so paid shall be returned by the registrar to the appellant].

RULE 53.

Factum in election appeals.

The *factum* or points for argument in appeal in controverted election appeals shall be printed as hereinbefore provided in the case of ordinary appeals.

See Rules 24 and 25, *ante* p. 113.

RULE 54.

When to be deposited.

The points for argument in appeal or *factum* in controverted election cases shall be deposited with the registrar at least three days before the first day of the session fixed for the hearing of the appeal, and are to be interchanged by the parties in manner hereinbefore provided with regard to the *factum* or points in ordinary appeals.

See Rules 25 and 30.

Rule 55 provides for dispensing with a *factum* in certain cases.

RULE 55.

Order dispensing with printing of record or factum in election appeals.

In election appeals a judge in chambers may, upon the application of the appellant, make an order dispensing with the printing of the whole or any part of the record, and may also dispense with the delivery of any *factum* or points for argument in appeal. Such order may be obtained *ex parte,* and the party obtaining it shall forthwith cause it to be served upon the adverse party.

In practice such an order is seldom or never made *ex parte.* Four clear days' notice should be given of the intention to apply for it. The order is usually obtained when the appeal has been limited by the notice provided for by the statute, sub-section 3, section 51, Dominion Controverted Elections Act, to any defined question or questions, of fact or of law. And it is the duty of the appellant to apply for such an order whenever it will save useless expense, otherwise he may have to pay the costs of printing the unnecessary matter in any event. See judgment of Taschereau, J., in *Brassard* v. *Langevin,* 1 Can. S. C. R. 201. See also judgmen of Henry, J., at page 231.

RULE 56.

Fees to be paid registrar.

The fees mentioned in Schedule (C) to these orders shall be paid to the registrar by stamps to be prepared for that purpose.

The schedule C originally appended to the Orders has been repealed and a new schedule substituted by General Order 84, which see. With a few exceptions, fees are not payable in criminal and *habeas corpus* appeals.

The Supreme Court has no power to allow an appeal in *formâ pauperis.* The payment of the fees fixed by the schedule will not therefore be dispensed with any more than the giving of the security required by the Act. Dig. S. C. D., p. 403, No. 100.

RULE 57.

Costs.

Costs in appeal between party and party shall be taxed pursuant to the tariff of fees contained in Schedule (D) to these orders.

By section 109 of the Supreme and Exchequer Courts Act it is provided, that the judges of the Supreme Court, or any five of them may, from time to time, make general rules and orders, among other things, "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."

By section 62 of the Act, "The Supreme Court may, in its discretion, order the payment of the costs of the court appealed from, and also of the appeal, or any part thereof, as well when the judgment appealed from is varied or reversed, as where it is affirmed."

Section 51 provides for the costs of a respondent when the appellant discontinues his appeal.

In controverted election appeals by sub-section 3, of section 51 of the Dominion Controverted Elections Act, the Supreme Court of Canada may make such order as to the money deposited as security for costs and as to the costs of the appeal as it thinks just. Section 53 of the said Act provides for the recovery of costs awarded by the court below against a petitioner out of the deposit made by the petitioner, or if deposit insufficient by execution.

And by section 54 of the Act it is provided, that:

"In appeals under this Act, to the Supreme Court of Canada, the said court may adjudge the whole or any part of the costs in the court below to be paid by either of the parties; and any order directing the payment of such costs shall be certified by the registrar of the Supreme Court of Canada to the court in which the petition was filed, and the same proceedings for the recovery of such costs may thereupon be taken in the last mentioned court as if the order for payment of costs had been made by that court or by the judge before whom the petition was tried." 39 V., c. 26, s. 16.

In appeals under the Winding-up Act, chapter 129, Revised Statutes of Canada, costs are regulated by the provisions of the Supreme and Exchequer Courts Act. So far as appeals to the Supreme Court of Canada from the District of Keewatin are concerned section 75 of the Winding-up Act is also applicable, which provides, that if the appellant does not proceed with his appeal according to the law or the rules of practice, as the case may be, the court appealed to on the application of the respondent, may dismiss the appeal with or without costs.

With respect to appeals from the Maritime Court of Ontario, section 19 of the Maritime Court Act provides, that: "The practice, procedure and powers as to costs and otherwise of the Supreme Court of Canada in

other appeals shall, so far as applicable, and unless such court otherwise orders, apply and extend to appeals under this Act, when no other provision is made, either by this Act or the general rules made under this Act, or under the Supreme and Exchequer Courts Act."

With regard to criminal appeals, no special provision has been made by chapter 50 of 50-51 V. as to costs, which in such appeals are therefore entirely regulated by the provisions of the Supreme and Exchequer Courts Act and the practice of the court.

As a rule no costs are given in criminal appeals, or in *habeas corpus* appeals. But where an appeal in a *habeas corpus* matter had been proceeded with after the discharge of the prisoner and for the mere purpose of deciding the question of costs, the appeal was dismissed with costs. Dig. S. C. D., p. 386, Nos. 31 & 32. *In re G. R. Johnson, Ibid.* p. 540, No. 4.

Costs in exchequer appeals also are regulated entirely by the provisions of the Supreme and Exchequer Courts Act and the rules of the court.

SECURITY FOR COSTS.

Security for costs must be given in all appeals, except:

1. Appeals by or on behalf of the Crown. See sub-section 2 of section 46 Supreme and Exchequer Courts Act.

When an appeal by or on behalf of the Crown comes from the Exchequer Court, section 53 of chapter 16 of 50-51 V., (the Exchequer Court Act) provides that no deposit by way of security shall be required, a notice of intention to appeal filed with the registrar of the Supreme Court taking its place.

2. Criminal appeals. Sub-section 2 of section 46 Supreme and Exchequer Courts Act.

3. Proceedings for or upon a writ of *habeas corpus*. *Ibid.*

In all other appeals the security, mode of giving and amount, are regulated by section 46 of the Supreme and Exchequer Courts Act, (see said section and notes thereon), except by sub-section 2 of said section:

1. Election appeals in which the security for costs is regulated by section 51 of the Dominion Controverted Elections Act, and by that section fixed at $100, by deposit.

2. In Exchequer Court appeals, in which, by section 51 of chapter 16 of 50-51 V., the security is fixed at $50, by deposit.

There would at first sight be some difficulty in finding good reasons for fixing the security at $100 and $50 respectively in election and exchequer appeals, instead of $500, as in ordinary appeals. In practice, owing to the fact that the records in such cases have usually been very voluminous, the deposit has been altogether inadequate to serve as security for the costs. It may be that in these cases it was thought desirable not to place difficulties in the way of appealing and of having them if possible inexpensively and promptly disposed of.

In exchequer appeals, especially, it may be said the Crown should be willing to facilitate an appeal by a subject seeking redress from it. Where the appeal is by the subject he needs no security from the Crown, and therefore none is required by the statute.

As to security, see further notes to section 46 of the Supreme and Exchequer Courts Act.

And as to when costs will or will not be given see notes to section 62 of the Act.

PRACTICE ON TAXATION.

It will be observed that Rule 57 relates only to costs "between party and party." The registrar is not authorized to tax costs between solicitor and client. *Boak* v. *Merchants Marine Ins. Co.*, Dig. S. C. D., p. 387, No. 35.

The agent of the successful party attends the registrar's office for an appointment. It is usual to take one appointment for the settlement of the minutes of judgment and taxation of the costs. The agent has this appointment served with a copy of the minutes of judgment and of the bill. The bill is always prepared by the agent or solicitor, and never by the registrar, and the agent or solicitor prepares also the minutes of judgment. At the time appointed the agents or solicitors for the respective parties attend before the registrar, who settles the minutes and taxes the costs. If either party is dissatisfied with the taxation he should apply to the registrar sitting as a judge in chambers for a reviewal of the taxation, giving due notice to the other side, and setting out his objections in writing. If the registrar refuses to alter his taxation, an appeal can be taken to a judge, under Rule 83. It is not usual to interfere with the taxation of the registrar on a mere question of amount. He must have exercised his discretion on a wrong principle.

An application for a fiat for an increased counsel fee should also be made to the registrar in chambers, after the taxation, and upon notice. An appeal must be one of exceptional importance and difficulty to justify such an application.

RULE 58.

Court or judge may order payment of fixed sum for costs.

The court or a judge may direct a fixed sum for costs to be paid in lieu of directing the payment of costs to be taxed.

This rule is followed frequently in interlocutory applications. In these applications it has been the practice to specify in the orders the amount to be paid as costs, instead of directing such costs to be taxed. But an order or judgment dealing with the general costs of an appeal always leaves the amount to be taxed.

RULE 59.

This Rule, which provided for the manner in which payment of costs might be enforced, has been repealed by General Order 85. The Rule read as follows: "The payment of costs, if so ordered, may be enforced by process of execution in the same manner and by means of the same writs and according to the same practise as may be in use from time to time in the Exchequer Court of Canada."

It is provided by the Supreme and Exchequer Courts Act, as follows:

"105. The process of the Supreme Court shall run throughout Canada, and shall be tested in the name of the chief justice, or in case of a vacancy in the office of chief justice, in the name of the senior puisnè judge of the court, and 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 Supreme Court, and shall perform the duties and functions of sheriffs in connection with the said courts; and in any case where the sheriff is disqualified, such process shall be directed to any of the coroners of the county or district." 38 V., c. 11, ss. 66 & 75.

"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." 39 V., c. 26, s. 35.

"108. No attachment as for contempt shall issue in the Supreme Court for the non-payment of money only." 39 V., c. 26, s. 36.

These sections, 107 and 108, have been substituted by chapter 16 of 50-51 V., sch. A., for original sections.

In pursuance of section 107, General Order 85 before mentioned has been passed to prescribe the writs which shall be issued out of the Supreme Court, and to regulate the practice in relation thereto, including the fees to be paid to sheriffs.

Hitherto the court has always refused to issue a writ of execution to nforce payment of costs ordered by any final judgment, but has left parties to their remedies in the court below.

Section 67 of the Supreme and Exchequer Courts Act, provides as follows:

"67. The judgment of the Supreme Court in appeal shall be certified by the registrar of the court to the proper officer of the court of original jurisdiction, who shall thereupon make all proper and necessary entries thereof; and all subsequent proceedings may be taken thereupon, as if the judgment had been given or pronounced in the said last mentioned court." 38 V., c. 11, s. 46.

But the court will direct the issue of the necessary writs to enforce payment of interlocutory costs.

RULE 60.

This Rule has also been repealed by General Order 85, which deals with the subject matter of the rule, the punishment of contempts. The rule read as follows: "Contempts incurred by reason of non-compliance with any order of the court other than order for payment of money, may be punished in the same manner and by means of the same process and writs, and according to the same practice as may be in use from time to time in the Exchequer Court of Canada."

As we have seen, by section 108 of the Supreme and Exchequer Courts Act, it is provided that "no attachment as for contempt shall issue in the Supreme Court for the non-payment of money only." General Order 85 provides for other cases.

CROSS APPEALS.

RULE 61.

Cross appeals.

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 an appeal to contend that the decision of the court below should be varied, he shall, within the time specified in the next rule, or such time as may be prescribed by the special order of a judge, give notice of such intention to any parties who may be affected 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 an 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.

The wording of this rule is substantially the same as that of order 58, rule 6, of the Supreme Court, 1883, (English). See Annual Practice, 1887-8, page 706 and notes, page 707.

The giving "notice of motion by way of cross appeal," would not be a procedure applicable in the Supreme Court of Canada, where an appeal is not initiated by a notice of motion, as it is to the Court of Appeal in England. Order 58, rule 1, of the Supreme Court (English) says, "All appeals to the Court of Appeal 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."

Rule 16 of the Court of Appeal for Ontario, the procedure in which court is substantially the same as in the Supreme Court of Canada, says: "A cross appeal shall not under any circumstances be necessary, but if a respondent intends upon the hearing to contend that the decision should be varied, he shall, with his reasons against the appeal, give notice of such contention to any parties who may be affected by such contention, and such notice shall concisely state the grounds of such contention in the same manner as reasons of appeal are stated. The omission to

give such notice shall not diminish the powers conferred by the Act upon the Court of Appeal, but may, in the discretion of the court, be ground for the adjournment of the appeal or for a special order as to costs."

The practice under Rule 61 would seem, to some extent at least, to differ from the practice of the Judicial Committee as to cross appeals, and resemble rather the practice of the Court of Appeal in England. But where the rule may not be applicable, reference will still have to be made to the procedure of the Judicial Committee (see section 39 of the Supreme and Exchequer Courts Act,) which is concisely stated in Lattey's Handy Book on Privy Council Practice as follows, page 58:

"Each party who feels aggrieved by a decree, should appeal from that portion he complains of. It often happens that both plaintiff and defendant in the court below appeal from the same decree, in which case there are cross appeals. When there are cross appeals an order is usually made to consolidate them. The application for an order to consolidate two appeals can be made by either party at any time, and must be on petition to Her Majesty, and has to be moved by counsel. This order is only made when the same parties who are appellants in one case are respondents in the other, and *vice versa*." See also Macpherson's Privy Council Practice, pages 91-93. See also *Hiddingh* v. *Dempsea*, 12 Appeal Cases, 107.

The Judicial Committee by the order of consolidation, will, if necessary, protect a cross appellant against being prejudiced by the withdrawal of the appeal by the appellant, or by the dismissal of the appeal of the latter for want of prosecution, by giving liberty to prosecute the cross appeal in such an event as a separate cause. See Macpherson page 93.

Under the English Court of Appeal Practice, where an appellant withdraws his appeal, a respondent who has given notice under the rule is entitled to elect whether he will continue or withdraw it. *The Beeswing*, 10 P. D. 18 and *Mason* v. *Cattley*, Law Notes, 1885, page 15.

The rule does not apply to a respondent who seeks to have an order varied on a point in which the appellant has no interest, but he must give a notice of appeal. *In re Cavander*, 16 C. D. 270.

Where both an appeal and a cross-appeal were dismissed, the appellants were ordered to pay the costs after deducting such as had been occasioned by the notice given by the respondent. *The Lauretta*, 4 P. D. 25. And where one of the respondents gave a cross-notice, affecting his co-respondent, the costs were apportioned; *Harrison* v. *Cornwall Minerals Railway*

Co., 18 C. D. 346. But where the costs cannot have been materially increased by the notice, they ought not to be apportioned; *Robinson* v. *Drake*, 23 C. D. 98.

In the Supreme Court of Canada it was held where a respondent who had given notice of cross-appeal moved for leave to proceed with the cross-appeal notwithstanding that the original case had not been filed in time to be proceeded with at the then session, that if the cross-appellant desired to proceed with his cross-appeal he should have himself filed the original case; Dig. S. C. D,, p. 389, No. 48. But if an appellant chooses to avail himself of his right to discontinue his appeal under section 51 of the Supreme and Exchequer Courts Act, what would be the position of a respondent who, intending to rely on the mode of procedure provided by rule 61, has failed to take a substantive appeal? He may not have even given the notice, for that, by rule 62, may be only a fifteen days' notice. It would seem safer where the respondent is greatly interested in having a variation of the judgment of the court below and not certain that the appellant will prosecute his appeal, to give notice of appeal and security, and then apply to consolidate the two appeals, following the practice of the Judicial Committee.

In *Pilon* v. *Brunnet*, 5 Can. S. C. R. 319, a motion to quash an appeal on the ground that it should not have been brought as a substantive appeal, but as a cross-appeal was dismissed. But the respondent although successful in getting the judgment varied was allowed only the costs of a cross-appeal taken under rule 61.

In the court of appeal for Ontario, where one of two defendants, both of whom had given notice of appeal and who joined in the appeal bond, gave notice of discontinuance, an objection on the part of the plaintiff who had given notice of cross-appeal to the prosecution of the appeal by the other defendant was overruled. See *Arscott* v. *Lilley*, 14 Ont. App. R. 285.

In *Stephens* v. *Chaussée*, an action brought to recover damages for death caused by negligence, the Court of Queen's Bench for Lower Canada (appeal side) reduced the amount of the verdict. On the hearing in appeal before the Supreme Court counsel for respondent contended that the original verdict should be restored. But it was held that this could not be done, there being no cross-appeal. 2nd March, 1888.

In *City of Montreal* v. *Labelle*, also an action brought to recover damages for death caused by negligence, a sum was awarded by the court below to plaintiffs by way of *solatium*. Counsel for respondent urged upon the Supreme Court at the hearing, that even if this were illegal, as the

court intimated it was, being contrary to the law as laid down by the court in *C. P. R.* v. *Robinson*, 14 Can. S. C. R. 105, yet it was competent to the court to give the judgment which the court below ought to have given, and to award substantial damages other than for a *solatium*. But *held*, that if the respondent wished to urge such a contention he should have given notice by way of cross-appeal. 14th June, 1888.

RULE 62.

[As amended by Rule 80.]

Notice to be given.

Subject to any special order which may be made, notice by a respondent under the last preceding rule shall be [15 days'] notice.

By Rule 61, the notice may be given within the time specified in this rule, "or such time as may be prescribed by the special order of a judge."

RULE 63.

[As amended by Rule 80.]

Factum in cross appeals.

A respondent who gives a notice, pursuant to the two last preceding rules shall, before or within two days after he has served such notice, deposit a printed *factum* or points for argument in appeal with the registrar as hereinbefore provided as regards the principal appeal, and the parties upon whom such notice has been served shall within [one week] after service thereof upon them, deposit their printed *factum* or points with the registrar, and such *factum* or points shall be interchanged between the parties as hereinbefore provided as to the principal appeal.

See Rules 23, 24, 25, 29 & 30.

TRANSLATIONS.

RULE 64.

Translation of factum.

Any judge may require that the *factum* or points for argument in appeal of any party shall be translated into the language with which such judge is most familiar, and in that case the judge shall direct the registrar to cause the same to be translated, and shall fix the number of copies of the translation to be printed, and the time within which the same shall be deposited with the registrar, and the party depositing such *factum* shall thereupon cause the same forthwith to be printed at his own expense and such party shall not be deemed to have deposited his *factum* until the required number of the printed copies of the translation shall have been deposited with the registrar.

RULE 65.

Translation of judgments and opinions of judges of court below.

Any judge may also require the registrar to cause the judgments and opinions of the judges in the court below to be translated, and in that case the judge shall fix the number of copies of the translation to be printed and the time within which they shall be deposited with the registrar, and such translation shall thereupon be printed at the expense of the appellant.

RULE 66.

Payment of money into court.

Any party directed by an order of the court or a judge to pay money into court must apply at the office of the regis-

trar 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.

RULE 67.

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.

RULE 68.

How made.

Money ordered to be paid out of court is to be so paid upon the cheque of the registrar, countersigned by a judge.

RULE 69.

Formal objections.

No proceeding in the said court shall be defeated by any formal objection.

Section 95 of the Supreme and Exchequer Courts Act, provides that:

"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."

RULE 70.

Extending or abridging time.

In any appeal or other proceeding the court or a judge may enlarge or abridge the time for doing any act, or taking any proceeding, upon such (if any) terms as the justice of the case may require.

Substantially the same as the first part of English Order 64, Rule 7, which, however, says further, "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." Rule 70 has been frequently acted upon and applications entertained after the expiration of the time appointed or allowed.

The time for doing certain acts cannot be extended or abridged by consent, such as the time within which the case must be filed, or case inscribed, under Rule 31, or the time within which the factums must be deposited under Rule 23. See Rule 42 and notes.

The rule only applies where a limited time is fixed for something to be done, and not where it is ordered that some one act must be done before another; *Pilcher* v. *Hinds*, 11 C. D. 905.

For cases showing grounds on which applications for enlargement of time may be granted or refused, see Annual Practice, 1887-8, pages 744-745, and Wilson's Judicature Acts, 6th Ed. page 469. See also notes to similar rule in McLellan's Judicature Acts, page 554 & 555; also *Ibid.* notes to Rule 317, c., page 432; also *Langdon* v. *Robinson*, 12 Ont. Pr. R. 139: *Re Gabourie*, 12 Ont. Pr. R. 252: *Platt* v. *G. T. R.*, 12 Ont. Pr. R. 380: see also notes to section 42 Supreme and Exchequer Courts Act, *ante*, p. 32.

RULE 71.

Registrar to keep necessary books.

The registrar is to keep in his office all appropriate books for recording the proceedings in all suits and matters in the said Supreme Court.

RULE 72.

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 a day appointed by the Governor-General for a public fast or thanksgiving, or any other legal holiday or non-juridicial day, as provided by the statutes of the Dominion of Canada.

Days are clear days when expressed to be "at least" a certain number of days; *Reg.* v. *Shropshire Justices*, 8 A. & E. 173: Fisher's Digest, 8323: *Webster* v. *Lees*, 3 C. L. T. 504: *Rumohr* v. *Marx*, 18 C. L. J. 444, 19 C. L. J. 10, 3 C. L. T. 31.

In all cases expressed to be clear days, or where the term "at least" is added, both days are to be excluded.

The word "forthwith" in statutes and rules of court must be construed with reference to the objects of the provision and the circumstances of the case: *Ex parte Lamb*, 19 C. D. 169.

The word "month" it is submitted, when used in the rules, means a calendar month, although there is no interpretation of the word in the rules themselves. By section 109 of the Supreme and Exchequer Courts Act, the rules, when not inconsistent with the express provisions of the Act, are to have force and effect as if enacted therein; and by section 7 of the Interpretation Act, paragraph 25, the expression "month" means a calendar month in every Act of the Parliament of Canada, unless the context otherwise requires.

A calendar month when not exactly coterminous with a given calendar month is from the day of the commencement, reckoning that day, to and inclusive of the day in the succeeding month immediately preceding the day corresponding to the day of the commencement; *Migotti* v. *Colvill*, 4 C. P. D. 233: *Freeman* v. *Read*, 11 W. R. 802: *Wright* v. *Leys*, 10 Ont. Pr. R. 354.

By the Interpretation Act, paragraph 26, the expression "holiday" includes Sundays, New Year's Day, the Epiphany, the Annunciation,

Good Friday, the Ascension, *Corpus Christi*, St. Peter and St. Paul's Day, 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, and any day appointed by proclamation for a general fast or thanksgiving.

And by paragraph 27: "If the time limited by any Act for any proceeding, or the doing of any thing under its provisions, expires or falls upon a holiday, the time so limited shall be extended to, and such thing may be done, on the day next following which is not a holiday."

RULE 73.

Adjournment if no quorum.

If it happens at any time that the number of judges necessary to constitute a quorum for the transaction of the business to be brought before the court is not present, the judge or judges then present may adjourn the sittings of the court to the next or some other day, and so on from day to day until a quorum shall be present.

See section 19 of the Supreme and Exchequer Courts Act, *ante* p. 9.

VACATIONS.

RULE 74.

Christmas vacation.

There shall be a vacation at Christmas, commencing on the 15th of December and ending on the 10th of January.

RULE 75.

Long vacation.

The long vacation shall comprise the months of July and August.

Chambers are not held in vacation: see Rule 83; and only applications of urgency should be made; Dig. S. C. D., p. 418, No. 116. Where judgment was pronounced on the 30th June and security given on the 3rd July, and no steps taken to further prosecute the appeal till the 17th

September following, the appellant's solicitor being under the impression that the time of vacation did not count, a motion to dismiss for want of prosecution was refused without costs, and further time given to appellant, up to the 10th October then next. *Herbert* v. *Donovan*, Dig. S. C. D., p. 418, No. 117.

The Registrar has held that the time of vacation does not count in estimating the time within which the case has to be filed pursuant to Rule 5.

In vacation the registrar's office is open from 11 o'clock in the forenoon to 12 o'clock noon every juridical day.

RULE 76.

Interpretation.

In the preceding rules the term "a judge" means any judge of the said Supreme Court transacting business out of court.

By virtue of Rule 83, the term would include the registrar sitting in chambers for the transaction of business under that rule.

RULE 77.

Interpretation.

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" includes a body politic or corporate, and also Her Majesty the Queen and Her Majesty's Attorney-General.

(4) The word "affidavit" includes affirmation.

(5) The words "the Act" mean "*The Supreme and Exchequer Courts Act.*"

SCHEDULE A.

NOTICE CALLING SPECIAL SESSION.

Dominion of Canada.

The Supreme Court will hold a special session at the city of Ottawa on the day of , 18 for the purpose of hearing causes and disposing of such other business as may be brought before the court (or for the purpose of hearing election appeals, criminal appeals, or appeals in cases of *habeas corpus*, or for the purpose of giving judgments only, as the case may be.)

By order of the Chief Justice, or by order of Mr. Justice

(Signed) R. C.
Registrar.

Dated this day of , 18

SCHEDULE B.

FORM OF NOTICE OF HEARING APPEAL.

In the Supreme Court of Canada.

J. A., appellant, *v.* A. B., respondent. Take notice that this appeal will be heard at the next session of the Court, to be held at the city of Ottawa on the day of ' 18

To , appellant's solicitor or attorney, or appellant in person.

Dated this day of , 18

SCHEDULE C.

TARIFF OF FEES TO BE PAID TO THE REGISTRAR OF THE SUPREME COURT OF CANADA.

[As substituted by General Order 84 for the original schedule.]

On entering every appeal	$10 00
On entering every judgment, decree or order in the nature of a final judgment	10 00
On entering every other judgment, decree or order	2 00
On filing every document or paper	10
Every search	25
Every appointment	50
Every enlargement of any appointment, or on application in Chambers	50
The foregoing items are not to apply to criminal appeals or appeals in matters of *habeas corpus* arising out of a criminal charge.	
On sealing every writ (besides filings)	2 00
Amending every document, writ or other paper	50
Taxing every bill of costs (besides filings)	1 00
Every allocatur	1 00
Every fiat	50
Every reference, inquiry, examination or other special matter referred to the registrar, for every meeting not exceeding one hour	1 00
Every additional hour or less	1 00
For every report made by the registrar upon such reference, etc	1 00
Upon payment of money into court, or deposited with the registrar, every sum under $200.00	1 00
A percentage on money over $200.00 paid in at the rate of one per cent.	

Receipt for money	$ 25
Comparing, examining and certifying transcript record on appeal to the Privy Council	10 00
Comparing any other document, paper or proceeding with the original on file or deposit in the registrar's office, per folio	2½
Every other certificate required from registrar	1 00
Copy of any document, paper or proceeding or any extract therefrom, per folio	10
Every affidavit, affirmation or oath administered by registrar	25
Every commission or order for examination of witnesses	1 50

All fees payable to the registrar are to be paid in stamps. See section 111, Supreme and Exchequer Courts Act, and Rule 56.

SCHEDULE D.

Referred to in Rule 57 of the Supreme Court of Canada.

See Rule 57 and notes.

TARIFF OF FEES.

To be taxed between party and party in the Supreme Court of Canada:	
On special case required by section 29 [now section 44] of the Act when prepared and agreed upon by the parties to the cause, including attendance on the judge to settle the same, if necessary, to each party	$25 00

Notice of appeal	$4 00
On consent to appeal directly to the Supreme Court from the court of original jurisdiction.	3 00

See section 26, sub-section 2, *ante* p. 18.

Notice of giving security	2 00
Attendance on giving security	3 00
On motion to quash proceedings under section 37 [now section 59] according to the discretion of the registrar to	25 00
Subject to be increased by order of the court or of a judge	
On *factums* in the discretion of the registrar to	50 00
Subject to be increased by order of the court or a judge	
[For engrossing for printer copy of case as settled, when such engrossed copy is necessarily and properly required, per folio of 100 words	10
For correcting and superintending printing, per 100 words	05]

Amendment to the tariff by Rule 81.

On dismissal of appeal if case be not proceeded with, in the discretion of the registrar to	25 00
Subject to be increased by order of the court or a judge	
Suggestions under sections 42, 43 & 44 [now 54, 55 & 56] including copy and service	2 50
Notice of intention to continue proceedings under section 45 [now section 57]	4 00
On depositing money under section 48 [now section 51 of the Dominion Controverted Elections Act] in controverted election cases	2 50

Notice of appeal in election cases limiting the appeal to special and defined questions under section 48 [now section 51 of the Dominion Controverted Elections Act]	6 00
Allowance to cover all fees to attorney and counsel for the hearing of the appeal, in the discretion of the registrar to.....	200 00
Subject to be increased by order of the court or a judge.....	
On printing *factums*, the same fees as in printing the case.	
Besides the registrar's fees, reasonable charges for postages and disbursements necessarily incurred in proceedings in appeal will be taxed by the taxing officer.	
[Allowance to the duly entered agent in any appeal, in the discretion of the registrar, to	20 00]

Addition to tariff by Rule 82.

For forms of bills of costs, see *post*, Appendix VII.

RULE 78.

Amendment to Rule 52.

It is ordered that the words "*thirty cents for each folio of one hundred words in the record so printed*," in the General Rule No. 52 of the 7th of February, 1876, be struck out and cancelled, and that in substitution therefor there be read the following words, "*his due proportion of the costs of printing the same, such proportion to be fixed by the registrar, and the amount so paid shall be returned by the registrar to the appellant.*"

See Rule 52.

RULE 79.

Provision for acting registrar.

It is ordered that during the absence from the city of Ottawa, of Robert Cassels, jr., Esq., the registrar of this

court, or until further order, the functions and duties of the said registrar, including the taxation of costs, be performed by George Duval, Esq., the precis writer of this court.

RULE 80.

Amendments to certain rules.

It is ordered:

1. That rule *eleven* be and the same is hereby amended by striking out the word "*immediately*" at the beginning of such rule.

2. That rule *fourteen* be and the same is hereby amended by striking out the words "*one month*" therein contained, and by inserting in lieu thereof the words "*fifteen days.*"

3. That rule *fifteen* be and the same is hereby amended by inserting after the words "*and mailing,*" where they occur in such rule, the words "*on the same day,*" and by striking out the words "*in sufficient time to reach him in due course of mail before the time required for service.*"

4. That rule *twenty-three* be and the same is hereby amended by striking out the words "*one month*" at the beginning of said rule, and by inserting in lieu thereof the words "*fifteen days.*"

5. That rule *thirty-one* be and the same is hereby amended by striking out the words "*one month,*" where they occur in said rule, and by inserting in lieu thereof the words "*fourteen days*"; and by adding at the end of said rule the words "*but no appeal shall be so inscribed which shall not have been filed twenty clear days before said first day of said session, without the leave of the court or a judge.*"

6. That rule *sixty-two* be and the same is hereby amended by striking out the words "*one month's*" and by inserting in lieu thereof the words "*fifteen days*'."

7. That rule *sixty-three* be and the same is hereby amended by striking out the words "*two weeks*" where they occur in said rule, and by inserting in lieu thereof the words "*one week*."

RULE 81.

Amendments to tariff of fees.

It is hereby ordered that Schedule D annexed to the rules of the Supreme Court of Canada be amended as follows:—

Instead of the item: "Printed case, per folio of 100 words, including correcting, superintending printing and all necessary attendances, 30 cts.," the following allowances shall be taxed by the registrar:—

"For engrossing for printer, copy of case as settled, when such engrossed copy is necessarily and properly required, per folio of 100 words, 10 cts.

"For correcting and superintending printing, per 100 words, 5 cts."

RULE 82.

Allowance to agents.

It is hereby ordered, that an allowance shall be taxed by the registrar to the duly entered agent in any appeal, in the discretion of the registrar, to $20.

See Rule 16 and notes for the duties of an agent.

GENERAL ORDER 83.

Jurisdiction of registrar in chambers.

Whereas by "The Supreme and Exchequer Courts Act," section 109, as amended by chapter 16 of the Act passed

in the 51st year of Her Majesty's reign intituled "An Act to amend 'The Supreme and Exchequer Courts Act,' and to make better provision for the trial of claims against the crown," it is provided that the judges of the Supreme Court, or any five of them, may, from time to time, make general rules and orders for certain purposes therein mentioned, and among others 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, was at the time of the last mentioned Act, or might be thereafter, done, transacted, or exercised by a judge of the court sitting in chambers, and as might be specified in such rule or order. It is therefore ordered :—

1. That the Registrar of the Supreme Court of Canada be and is hereby empowered and required 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, was at the time of the passing of the said last mentioned Act, and is now, or may be hereafter, done, transacted, or exercised by a judge of the said court sitting in chambers, except in matters relating to :—

(*a.*) Granting writs of *habeas corpus* and adjudicating upon the return thereof.

(*b.*) Granting writs of *certiorari*.

2. In case any matter shall appear to the said registrar to be proper for the decision of a judge, the registrar may refer the same to a judge, and the judge may either dispose of the matter, or refer the same back to the registrar with such directions as he may think fit.

3. Every order or decision made or given by the said registrar sitting in chambers shall be as valid and binding on all parties concerned, as if the same had been made or given by a judge sitting in chambers.

4. All orders made by the registrar sitting in chambers are to be signed by the registrar.

5. Any person affected by any order or decision of the registrar may appeal therefrom to a judge of the Supreme Court in Chambers.

(*a*) Such appeal shall be by motion on notice setting forth the grounds of objection and served within four days after the decision complained of, and two clear days before the day fixed for hearing the same, or served within such other time as may be allowed by a judge of the said court or the registrar.

(*b*) The motion shall be made on the Monday appointed by the notice of motion, which shall be the first Monday after the expiry of the delays provided for by the foregoing sub-section, or so soon thereafter as the same can be heard by a judge, and shall be set down not later than the preceding Saturday in a book kept for that purpose in the registrar's office.

6. For the transaction of business under these rules, the registrar, unless absent from the city, or prevented by illness or other necessary cause, shall sit every juridical day, except during the vacations of the court, at 11 a.m., or such other hour as he may specify from time to time by notice posted in his office.

October, 17th, 1887.

GENERAL ORDER No. 84.

Tariff of fees to be paid registrar.

It is hereby ordered that Schedule C, referred to in Rule 56, being the Tariff of Fees to be paid to the registrar by stamps, be and the same is repealed and the following substituted therefor :—

Here follows schedule C as found on page 147.

GENERAL ORDER No. 85.

Writs to be issued out of Supreme Court—Practice relating thereto—Tariff of fees to sheriffs.

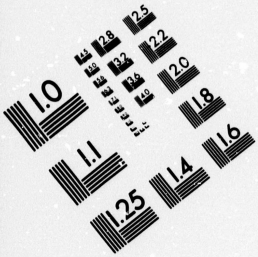
Whereas by section 107 of the Supreme and Exchequer Courts Act, as substituted for the original section of such Act by Schedule A of chapter 16 of the Act passed in the fifty-first year of Her Majesty's reign, intituled : "An Act to amend 'The Supreme and Exchequer Courts Act' and to make better provision for the trial of claims against the Crown," it is provided that "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."

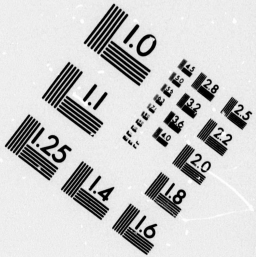
And whereas it is desirable to make rules prescribing the writs which shall be issued out of the said Court from time to time and regulating the practice in relation thereto :

It is therefore ordered :—

1. A judgment or order for the payment of money against any party to an appeal other than the Crown may be enforced by writs of *fieri facias* against goods and *fieri facias* against land.

2. A judgment or order requiring any person to do any act other than the payment of money or to abstain from





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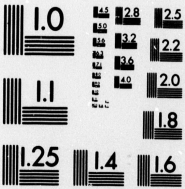

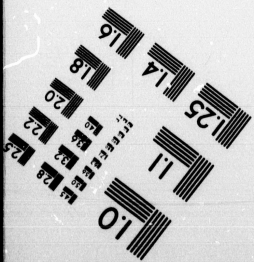

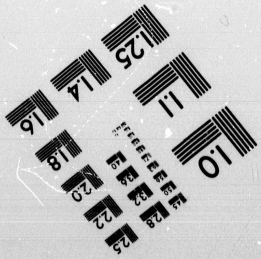

doing anything may be enforced by writ of attachment or by committal.

3. Writs of *fieri facias* against goods and lands shall be executed according to the exigency thereof, and may be in the following form :—

CANADA,
Province of } In the Supreme Court of Canada.

Between :

A. B., (Plaintiff, *or as the case may be*) Appellant.

AND

C. D., (Defendant, *or as the case may be*) Respondent.

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 Supreme Court of Canada, in a certain action [or certain actions, *as the case may be*], wherein A. B. is plaintiff and appellant, and C. D. and others are defendants and respondents [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 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 Honorable Sir William Johnstone Ritchie, Knight, Chief Justice of our Supreme 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.

4. 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* may issue to compel the sale of the property seized. Such writ may be in the form following :—

CANADA,
Province of } In the Supreme Court of Canada.

Between

A. B., (Plaintiff, *or as the case may be*) Appellant.

AND

C. D., (Defendant, *or as the case may be*) Respondent.

Victoria, etc., (*as in the writ of fieri facias.*)

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 Supreme Court of Canada aforesaid, that by virtue of the said writ to you directed, you had taken 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 the 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 Supreme Court of Canada immediately after the execution hereof, to be paid to the said A. B. and have there then this writ.

Witness, etc., (conclude as in writ of *fieri facias*).

5. 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.

6. A writ of attachment shall be executed according to the exigency thereof.

7. No writ of attachment shall be issued without the order of the court or a judge. It may be in the form following:

Victoria, etc., (*as in the writ of fieri facias*).

To the Sheriff of *Greeting:*

We command you to attach so as to have him before us in our Supreme Court of Canada, 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, etc., (*as in the writ of fieri facias*).

8. In these rules the term "writ of execution" shall include writs of *fieri facias* against goods and against lands, 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 shall be applicable to the case.

9. 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 the address of the attorney or solicitor suing out the same, and if issued through an agent the name and residence of the agent also, 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. A *præcipe* for a writ may be in the following form :

CANADA, Province of } In the Supreme Court of Canada.

Between

A. B., (Plaintiff, *or as the case may be*) Appellant.

AND

C. D., (Defendant, *or as the case may be*) Respondent.

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, *or as the case may be, according to* the writ required.]

Judgment [or order] dated day of

[Taxing Master's certificate, dated].

[X. Y., Solicitor for *party on whose behalf writ is to issue.*

10. No writ of execution shall be issued without the production to the officer by whom the same shall be issued of the judgment or order upon which the execution is to

issue, or an office copy thereof showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the judgment creditor to execution.

11. 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.

12. 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 or order, 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 or order was entered up.

13. 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 in the margin with a memorandum signed by the registrar or acting registrar of the court, stating 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 having the like memorandum; and a writ of execution so renewed shall have effect, and be entitled to priority according to the time of the original delivery thereof.

14. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with

the memorandum in the last preceding rule mentioned, showing the same to have been renewed, shall be *prima facie* evidence of its having been so renewed.

15. As between the original parties to a judgment or order, execution may issue at any time within six years from the recovery of the judgment or making of the order.

16. Where six years have elapsed since the judgment or order, 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 the court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect. And the court or judge may impose such terms as to costs or otherwise as shall seem just.

17. Any party against whom judgment has been given, or an order made, may apply to the court or a judge for a stay of execution or other relief against such a judgment or order, and the court or judge may give such relief and upon such terms as may be just.

18. 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 authorising the same to have relation back to the date of its issue, or to any other date or time.

19. Sheriffs and coroners shall be entitled to the fees and poundage prescribed by the schedule following:

SCHEDULE.

Every warrant to execute any process directed to the sheriff, when given to a bailiff	$ 75
Service of process, each defendant (no fee for affidavit of services in such cases to be allowed unless service made or recognized by the sheriff)	1 50
Serving other papers beside mileage	75
For each *additional* party served	50
Receiving, filing, entering and endorsing all writs, notices or other papers, each	25
Return of all process and writs (except subpœna) 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)	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.	
Bringing up prisoner on attachment or *habeas corpus*, besides travelling expenses actually disbursed, per diem	6 00
Actual and necessary mileage from the court house to the place where service of any process, paper or proceeding is made, per mile	13
Removing or retaining property, reasonable and necessary disbursements and allowances to be made by the registrar.	
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
For services not hereinbefore provided for, the registrar may tax and allow such fees as in his discretion may be reasonable.	

CORONERS.

The same fees shall be taxed and allowed to coroners for services rendered by them in the service, execution and return of process, as allowed to sheriffs for the same services as above specified.

20. Every order of a judge may be enforced in the same manner as an order of the court 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.

21. No execution can issue on a judgment or order against the Crown for the payment of money. Where in any appeal there may be a judgment or order against the Crown directing the payment of money for costs, or otherwise, the registrar may, on the application of the party entitled to the money, certify to the Minister of Finance, the tenor and purport of the judgment or order, and such certificate shall be by the registrar sent to or left at the office of the Minister of Finance.

22. Rules 59 and 60 of the Supreme Court of Canada are hereby repealed.

Ottawa, October 18th, 1888.

PART IV.

APPENDIX.

CONTENTS OF APPENDIX.

1. Extracts from the Interpretation Act—Revised Statutes of Canada, Chapter 1.

2. Extracts from the various statutes relating to the Jurisdiction of the County Courts of Nova Scotia, New Brunswick, British Columbia and Prince Edward Island.

3. Parts of 50-51 Victoria, Chapter 16, amending the Supreme and Exchequer Courts Act.

4. 51 Victoria, Chapter 37, An Act further to amend "The Supreme and Exchequer Courts Act."

5. Revised Statutes of Ontario, Chapter 42, respecting the Supreme Court of Canada and the Exchequer Court of Canada.

6. Extracts from Imperial Statutes and Orders in Council, relating to the Practice in Appeals to the Judicial Committee of the Privy Council.

7. Forms.

I.

EXTRACTS FROM

THE REVISED STATUTES OF CANADA.

CHAPTER I.

An Act respecting the Form and Interpretation of Statutes.

* * * * *

INTERPRETATION.

How enactments shall be construed—To apply to the whole Dominion—Territorial application of Acts amending previous Acts.

7. In every Act of the Parliament of Canada, unless the context otherwise requires :—

(1) The enactments apply to the whole of Canada :

(2) No Act amending a previous Act which does not apply to all the Provinces of Canada, and no enactment in any such amending Act, although of a substantive nature or form, shall apply to any Province to which the amended Act does not apply, unless it is expressly provided that such amending Act or enactment shall apply to such Province or to all the Provinces of Canada :

Application of expressions in present tense.

(3) The law shall be considered as always speaking, and whenever any matter or thing is expressed in the present tense, the same shall be applied to the circumstances as they arise, so that effect may be given to each Act, and every part thereof, according to its spirit, true intent and meaning :

"Shall" and "may."

(4) The expression "shall" shall be construed as imperative, and the expression "may" as permissive :

"Herein."

(5) Whenever the expression "herein" is used in any section of an Act, it shall be understood to relate to the whole Act, and not to that section only :

"Her Majesty," etc.

(6) The expression "Her Majesty," "the Queen," or "the Crown," means Her Majesty, her heirs and successors, sovereigns of the United Kingdom of Great Britain and Ireland :

"Governor," etc.

(7) The expression "Governor," "Governor of Canada," "Governor General," or "Governor in Chief," means the Governor General for the time being of Canada, or other the chief executive officer or administrator for the time being carrying on the Government of Canada on behalf and in the name of the Queen, by whatever title he is designated :

"Governor in Council," etc.

(8) The expression "Governor in Council," or "Governor General in Council," means the Governor General of

Canada, or person administering the Government of Canada for the time being, acting by and with the advice of, or by and with the advice and consent of, or in conjunction with, the Queen's Privy Council for Canada;

"Lieutenant Governor," etc.

(9) The expression "Lieutenant Governor" means the Lieutenant Governor for the time being, or other chief executive officer or administrator for the time being, carrying on the Government of the Province or Provinces of the Dominion indicated by the Act, by whatever title he is designated:

"Lieutenant Governor in Council," etc.

(10) The expression "Lieutenant Governor in Council" means the Lieutenant Governor, or person administering the Government of the Province indicated by the Act, for the time being, acting by and with the advice of, or by and with the advice and consent of, or in conjunction with, the Executive Council of the said Province:

"United Kingdom."

(11) The expression "the United Kingdom" means the United Kingdom of Great Britain and Ireland:

"United States."

(12) The expression "the United States" means the United States of America:

"Province."

(13) The expression "Province" includes the North-West Territories and the District of Keewatin:

"Legislature."

(14) The expression "Legislature," "Legislative Coun-

cil" or "Legislative Assembly," includes the Lieutenant Governor in Council and also the Legislative Assembly of the North-West Territories, and the Lieutenant Governor in Council of the District of Keewatin:

"Act."

(15) The expression "Act" as meaning an Act of a Legislature, includes an Ordinance of the North-West Territories or the District of Keewatin:

Names of places, etc.

(16) The name commonly applied to any country, place, body, corporation, society, officer, functionary, person, party or thing, means such country, place, body, corporation, society, officer, functionary, person, party or thing, although such name is not the formal and extended designation thereof:

"Proclamation."

(17) The expression "proclamation" means a proclamation under the Great Seal:

"Great Seal."

(18) The expression "Great Seal" means the Great Seal of Canada:

Governor acting by proclamation.

(19) When the Governor General is authorized to do any act by proclamation, such proclamation is understood to be a proclamation issued under an order of the Governor in Council; but it shall not be necessary that it be mentioned in the proclamation that it is issued under such order:

"County."

(20) The expression "county" includes two or more counties united for purposes to which the enactment relates:

Number and gender.

(21) Words importing the singular number or the masculine gender only, include more persons, parties or things of the same kind than one, and females as well as males, and the converse :

"Person."

(22) The expression "person" includes any body corporate and politic, or party, and the heirs, executors, administrators or other legal representatives of such person, to whom the context can apply according to the law of that part of Canada to which such context extends :

"Writing," "written."

(23) The expression "writing," "written," or any term of like import, includes words printed, painted, engraved, lithographed or otherwise traced or copied :

"Now," or "next."

(24) The expression "now" or "next" shall be construed as having reference to the time when the Act was presented for the Royal Assent.

"Month."

(25) The expression "month" means a calendar month :

"Holiday."

(26) The expression "holiday" includes Sundays, New Year's Day, the Epiphany, the Annunciation, Good Friday, the Ascension, Corpus Christi, St. Peter and St. Paul's Day, 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, and any day appointed by proclamation for a general fast or thanksgiving :

Reckoning time.

(27) If the time limited by any Act for any proceeding, or the doing of any thing under its provisions, expires or falls upon a holiday, the time so limited shall be extended to, and such thing may be done on the day next following which is not a holiday:

"Oath,"—"Sworn."

(28) The expression "oath" includes a solemn affirmation or declaration, whenever the context applies to any person and case by whom and in which a solemn affirmation or declaration may be made instead of an oath; and in like cases the expression "sworn" includes the expression "affirmed" or "declared."

Who may administer and certify to oaths.

(29) Whenever by an Act of Parliament, or by a rule of the Senate or House of Commons, or by an order, regulation or commission made or issued by the Governor in Council, under any law authorizing him to require the taking of evidence under oath, an oath is authorized or directed to be made, taken or administered, such oath may be administered, and a certificate of its having been made, taken or administered, may be given, by any one named in any such Act, rule, order, regulation or commission, or by a judge of any court, a notary public, a justice of the peace, or a commissioner for taking affidavits, having authority or jurisdiction within the place where the oath is administered:

"Sureties"—"Security."

(30) The expression "sureties" means sufficient sureties, and the expression "security" means sufficient security, and whenever these words are used, one person shall be sufficient therefor unless otherwise expressly required:

"Superior Court."

(31) The expression "superior court" means, in the Province of Ontario, the Court of Appeal for Ontario and the High Court of Justice for Ontario; in the Province of Quebec, the Court of Queen's Bench and the Superior Court in and for the said Province; in the Provinces of Nova Scotia, New Brunswick and British Columbia, the Supreme Court in and for each of the said Provinces respectively; in the Province of Prince Edward Island, the Supreme Court of Judicature for that Province; in the Province of Manitoba, Her Majesty's Court of Queen's Bench for Manitoba; and in the North-West Territories, the Supreme Court of the North-West Territories:

"Registrar"—"Register."

(32) The expression "registrar" or "register" means and includes indifferently registrars and registers in the several Provinces of Canada, and their deputies, respectively:

* * * * *

Powers to do anything to include all necessary powers for doing it.

(37) Whenever power is given to any person, officer or functionary, to do or to enforce the doing of any act or thing, all such powers shall be understood to be also given as are necessary to enable such person, officer or functionary to do or enforce the doing of such act or thing:

* * * * *

Acts to be done by more than two.

(42) When any act or thing is required to be done by more than two persons, a majority of them may do it:

* * * * *

Slight deviation from forms not to invalidate.

(44) Whenever forms are prescribed, slight deviations therefrom, not affecting the substance or calculated to mislead, shall not vitiate them :

Powers to make by-laws, what included by.

(45) Whenever power to make by-laws, regulations, rules or orders is conferred, it shall include the power, from time to time, to alter or revoke the same and make others :

* * * * *

Effect of repeal of repealing Act.

(48) The repeal of any Act or part of an Act shall not revive any Act or provision of law repealed by such Act or part of an Act, or prevent the effect of any saving clause therein :

Effect of repeal of Act as to persons acting under it—How far only to affect certain proceedings.

(49) Whenever any Act is repealed, wholly or in part, and other provisions are substituted, and whenever any regulation is revoked and other provisions substituted, all officers, persons, bodies politic or corporate, acting under the old law or regulation, shall continue to act as if appointed under the new law or regulation until others are appointed in their stead ; and all proceedings taken under the old law or regulation shall be taken up and continued under the new law or regulation, when not inconsistent therewith : and all penalties and forfeitures may be recovered and all proceedings had in relation to matters which have happened before the repeal or revocation, in the same manner as if the law or regulation was still in force, pursuing the new provisions as far as they can be adapted to the old law or regulation :

As to by-laws, etc., under repealed Act.

(50) Whenever any 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 :

Construction of references to enactments for which others are substituted—Proviso: case in which the repealed enactment is to stand good.

(51) Whenever any Act or part of an Act is repealed, and other provisions are substituted by way of amendment, revision or consolidation, any reference in any unrepealed Act, or in any rule, order or regulation made thereunder to such repealed Act or enactment, shall, as regards any subsequent transaction, matter or thing, be held and construed to be a reference to the provisions of the substituted Act or enactment relating to the same subject matter as such repealed Act or enactment : Provided always, that where there is no provision in the substituted Act or enactment relating to the same subject matter, the repealed Act or enactment shall stand good, and be read and construed as unrepealed, in so far, but in so far only, as is necessary to support, maintain or give effect to such unrepealed Act, or such rule. order or regulation made thereunder :

As to acts, etc., done before repeal.

(52) The repeal of an Act, or the revocation of a regulation, at any time, shall not affect any act done or any right or right of action existing, accruing, accrued or established, or any proceedings commenced in a civil cause, before the

time when such repeal or revocation takes effect; but the proceedings in such case shall be conformable, when necessary, to the repealing Act or regulation:

Offences committed and penalties incurred not affected by repeal.

(53) No offence committed and no penalty or forfeiture incurred, and no proceeding pending under any Act at any time repealed, or under any regulation at any time revoked, shall be affected by the repeal or revocation, except that the proceeding shall be conformable, when necessary, to the repealing Act or regulation, and that whenever any penalty, forfeiture or punishment is mitigated by any of the provisions of the repealing Act or regulation, such provisions shall be extended and applied to any judgment to be pronounced after such repeal or revocation:

* * * * *

II.

Extracts From the Various Statutes

RELATING TO THE

JURISDICTION OF THE COUNTY COURTS

OF

Nova Scotia, New Brunswick, British Columbia and Prince Edward Island.

NOVA SCOTIA.

The jurisdiction of the county courts of Nova Scotia is regulated by sections 16, 17 and 27, of the Revised Statutes of Nova Scotia, 5th Series, chapter 105.

16. The Court shall not have cognizance of any action—

1. Where the title to land is brought in question;

2. In which the validity of any devise, bequest or limitation is disputed, except as hereinafter provided;

3. For criminal conversation or seduction;

4. For breach of promise of marriage.

17. Subject to the exceptions in the last preceding section, the county court shall have original jurisdiction and hold pleas in all actions *ex contractu* where the debt or damage does not exceed four hundred dollars, and in case of debt where it is not less than twenty dollars; and in

all other actions where the damages claimed do not exceed two hundred dollars; and in all actions on bail bonds to the sheriff in any case in the county courts, whatever may be the penalty or amount sought to be recovered; and in all actions against a sheriff, or any officer of the county court, for any nonfeasance or malfeasance in connection with any matter transacted in the county courts; but the jurisdiction hereby conferred is declared to be concurrent with that of the Supreme Court, except as to actions of debt or assumpsit, in which the cause of action is less than eighty dollars, which shall only be brought to the Supreme Court by way of appeal from the county court.

* * * * * * *

27. In all cases where the property or effects distrained or sought to be recovered, or the plaintiff's claim or demand, does not exceed four hundred dollars, and in case the title to land is not *bonâ fide* brought into question, an order for replevin may issue from the county court of any county wherein such property, goods or other effects have been distrained, taken or detained.

And section 91 of chapter 105 provides for appeals from the county courts to the Supreme Court of Nova Scotia sitting *in banco*:

91. An appeal from every judgment, rule, order or decision of a judge of the county court, made during the trial of a cause in court or at chambers, except orders made in the exercise of such discretion as by law belongs to him, and also from his charge to the jury, and their verdict or findings, shall be to the Supreme Court sitting *in banco*.

NEW BRUNSWICK.

In New Brunswick the jurisdiction of the county courts is now regulated by chapter 9 of 45 Victoria (1882), "An Act in amendment of chapter 51 of the Consolidated Statutes of county courts," brought into force by proclamation on 1st June, 1882. (See N. B. Royal Gazette, 25th May, 1882.)

2. The courts shall not have cognizance of any action—

1. Where the title to land is brought in question; or,

2. In which the validity of any devise, bequest, or limitation is disputed.

3. Subject to the exceptions in the last preceding section the county courts shall have jurisdiction and hold plea in all personal actions of debt, covenant, and assumpsit, when the debt or damages do not exceed the sum of four hundred dollars, and in all actions of torts when the damages claimed do not exceed two hundred dollars, and in actions on bonds given to the sheriffs or otherwise in any case in a county court, whatever may be the penalty or amount sought to be recovered; provided always, that the said court for the city and county of St. John shall not have or exercise any jurisdiction in any cause in which the city court of St. John or the town of Portland civil court have jurisdiction.

An appeal is given from the county courts to the Supreme Court of New Brunswick, by section 51 of the Consolidated Statutes of New Brunswick, chapter 51:

51. In case any party in a cause in any of the said courts is dissatisfied with the decision of the judge upon any point of law, or with the charge to the jury, or with the decision

upon motion for a non-suit or new trial, or in arrest of judgment, or for judgment *non obstante veredicto*, he may appeal to the Supreme Court.

By section 38 of the Consolidated Statutes of New Brunswick, chapter 51, the jurisdiction of the county courts in replevin is limited to where the value of the goods or other property or effects distrained, taken or detained, does not exceed the sum of $200.

BRITISH COLUMBIA.

In British Columbia the jurisdiction of the County Courts is regulated by 48 V., c. 7.

21. Except as is otherwise hereinafter provided, the county courts shall not have cognizance of any action—

1. For any malicious prosecution or any libel or slander,

2. For criminal conversation, or seduction, or breach of promise of marriage; or,

3. Against a justice of the peace, or for anything done by him in the execution of his office.

22. Subject to the exceptions contained in the last preceding section, the county courts shall have jurisdiction and hold plea—

1. In all personal actions where the debt or damages claimed consists of a balance not exceeding $1,000 after an admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff.

EJECTMENT.

23 In actions of ejectment where the yearly value of the premises or the rent payable in respect thereof does not exceed $300; Provided that such actions of ejectment shall be brought and proceeded with in the county court holden in the district where the lands, tenements or hereditaments are situate.

WHERE TITLE COMES IN QUESTION.

24. The county courts shall have jurisdiction to try any action in which the title to any corporeal or incorporeal hereditaments shall come in question where the value of the lands, tenements, or hereditaments in dispute do not exceed $1,000, or the rent payable in respect thereof shall not exceed the sum of $300 by the year.

REPLEVIN.

26. Notwithstanding anything to the contrary contained in any statute or law in force in the Province, the county courts shall have jurisdiction in all actions of replevin where the value of the goods or other property or effects distrained, taken or detained does not exceed $1,000, and the title to the land be not brought in question.

Section 28 provides for interpleader by the sheriff.

Sections 31 to 39 provide for the recovery of tenements by landlord when term has expired, or been determined by notice, or for non-payment of rent, when neither the value of the premises, nor the rent payable in respect thereof, shall have exceeded $500 by the year.

JURISDICTION IN PROBATE.

40. Each county court shall have jurisdiction concurrently with the Supreme Court in all questions relating to testacy or intestacy, and to the validity of wills of persons

dying within the territorial limits of its district where the personal estate of the deceased shall not exceed $2,500; and shall have power to grant probates of wills and letters of administration of the personal estates and effects of persons dying within the territorial limits of its district, and to take order for the due passing of the accounts of the executors and administrators of such deceased persons, and for the proper custody of the personal estate and effects of such deceased persons, and for the delivery of the same to the person entitled thereto.

EQUITABLE JURISDICTION.

42. The said county courts shall also respectively have and exercise, concurrently with the Supreme Court of British Columbia, all the power and authority of the Supreme Court of British Columbia in the suits or matters hereinafter mentioned, that is to say:—

1. In all suits by creditors, legatees (whether specific, pecuniary, or residuary) devisees, (whether in trust or otherwise), heirs at law or next of kin, in which the personal, or real, or personal and real estate against, or for an account or administration of which the demand may be made shall not exceed in amount or value the sum of two thousand five hundred dollars;

2. In all suits for the execution of trusts, in which the trust estate or fund shall not exceed in amount or value the sum of two thousand five hundred dollars;

3. In all suits for foreclosure or redemption, or for enforcing any charge or lien, where the mortgage, charge, or lien shall not exceed in amount the sum of two thousand five hundred dollars;

4. In all suits for specific performance of, or for the reforming, or delivering up, or cancelling of any agreement

for the sale, purchase or lease of any property, where, in the case of a sale or purchase the purchase money, or in case of a lease the value of the property shall not exceed two thousand five hundred dollars ;

5. In all proceedings under the Trustees Relief Acts, or under the Trustee Acts, or under any of such Acts, in which the trust estate or fund to which the proceeding relates shall not exceed in amount or value the sum of two thousand five hundred dollars ;

6. In all proceedings relating to the maintenance or advancement of infants, in which the property of the infant shall not exceed in amount or value the sum of two thousand five hundred dollars ;

7. In all suits for the dissolution or winding up of any partnership, in which the whole property, stock and credits of such partnership shall not exceed in amount or value the sum of two thousand five hundred dollars ;

8. In all suits relative to water rights claimed under any Act, Statute, or Ordinance of the Province, in which the value of the right in dispute shall not exceed two thousand five hundred dollars ;

9. In all proceedings for orders in the nature of injunctions, where the same are requisite for granting relief in any matter in which jurisdiction is given by this Act to the county court ;

10. In applications for the sale of real estate under the "Intestate Estate Ordinance, 1868," where the total value of the real estate of such intestate shall not exceed in amount two thousand five hundred dollars ;

11. In applications under the "Destitute Orphans Act, 1877."

172. If any party in a suit or matter relating to equitable jurisdiction, conferred by section 42 of this Act, shall be dissatisfied with the determination or direction of a judge of a county court on any matter of law or equity, or on the admission or rejection of any evidence, such party may appeal from the same to the Supreme Court of British Columbia, two or more of the judges whereof, other than a judge whose decision is appealed from, shall sit as a court of appeal for that purpose. * * *

173. If either party in any other cause or matter where the amount claimed exceeds $50, shall be dissatisfied with the determination or direction of a judge of a county court in point of law; or upon the admission or rejection of any evidence, such party may appeal from the same to the Supreme Court of British Columbia, two or more of the judges whereof, other than the judge whose decision is appealed from, shall sit as a court of appeal for that purpose. * * * *

PRINCE EDWARD ISLAND.

In Prince Edward Island the jurisdiction of the county courts is regulated by 41 V., c. 12. The court has jurisdiction in all actions *ex contractu* and *ex delicto* where the debt or damages claimed do not exceed $150 (being below the amount required to give jurisdiction to the Supreme Court) and in actions on bail bonds given to a sheriff in any case in a county court, or on any other bond given under this Act, whatever may be the penalty or amount sought to be recovered. (Section 17.)

III.

PARTS OF 50-51, VICTORIA, CHAPTER 16

AMENDING

THE SUPREME AND EXCHEQUER COURTS ACT.

50-51 VICTORIA.

CHAPTER XVI.

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.*]

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

* * * * * * *

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.

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 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.

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.

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.

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 judgment 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 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 ensure 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 & 90.

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

IV.

SUPREME COURT ACT, 1888.

51 VICTORIA.

CHAPTER XXXVII.

Assented to the 22nd day of May, 1888.

An Act further to amend "The Supreme and Exchequer Courts Act," chapter one hundred and thirty-five of the Revised Statutes of Canada.

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

1. Section nineteen of "*The Supreme and Exchequer Courts Act,*" as amended by the Act passed in the session held in the fiftieth and fifty-first years of Her Majesty's reign, and chaptered sixteen, is hereby repealed and the following substituted therefor:

"**19.** Any five of the judges of the Supreme Court shall constitute a quorum, and may lawfully hold the court: Provided always, that it shall not be necessary for all the judges who have heard the argument in any case to be present in order to constitute the court for delivery of judgment in such case, but in the absence of any judge, from illness or any other cause, judgment may be delivered by a majority of the judges who were present at the hearing; and in such case it shall not be necessary for five judges to be present at the delivery of such judgment; and any judge who has heard the case and is absent at the

delivery of judgment, may hand his opinion in writing to any judge present at the delivery of judgment, to be read or announced in open court, and then to be left with the registrar or reporter of the court."

2. The paragraph lettered (*h*) added to section twenty-four of the Act first above cited by section fifty-seven and schedule A of the Act secondly above cited, is hereby amended by inserting the words "British Columbia" after the words "New Brunswick" in the first line of the said paragraph.

3. The said section twenty-four is hereby further amended by adding the following at the end thereof:—

"(*i*) And also by leave of the court or a judge thereof from the decision of the Supreme Court of the North-west Territories, although the matter may not have originated in a superior court."

4. The registrar shall, under the supervision of the Minister of Justice, have the management and control of the library of the court, and the purchase of all the books therefor.

V.

SPECIAL JURISDICTION ACT, ONTARIO.

An Act respecting the Supreme Court of Canada and the Exchequer Court of Canada.

R. S. O. 1887, cap. 42.

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

Supreme Court and Exchequer Court of Canada to have jurisdiction.

1. The Supreme Court of Canada and the Exchequer Court of Canada, or the Supreme Court of Canada alone, according to the provisions of the Act of the Parliament of Canada, known as "The Supreme and Exchequer Courts Act," shall have jurisdiction in the following cases :—

In controversies between Canada and Ontario.

1. Of controversies between the Dominion of Canada and this Province.

In controversies between Ontario and certain other Provinces.

2. Of controversies between any other Province of the Dominion, which may have passed an Act similar to this present Act, and this Province.

In certain cases involving the validity of Acts of Canada or Ontario.

3. Of suits, actions or proceedings in which the parties thereto, by their pleadings, shall have raised the question

of the validity of an Act of the Parliament of Canada, or of an Act of the Legislature of this Province, when in the opinion of a judge of the court in which the same are pending such question is material; and in such case the said judge 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 in order to the decision of such question. R. S. O. 1877, c. 37, s. 1.

Limitation of appeal to Supreme Court of Canada.

2. In any action respecting property or civil rights, whether for damages or for specific relief, no appeal shall lie to the Supreme Court of Canada without the special leave of such court, or of the Court of Appeal, unless the title to real estate or some interest therein, or the validity of a patent is affected; or unless the matter in controversy on the appeal exceeds the sum or value of $1,000 exclusive of costs, or unless the matter in question relates to the taking of an annual or other rent customary or other duty, or fee, or alike demand of a general or public nature affecting future rights. 44 V., c. 5, s. 43.

Authority of Judges of the Court of Exchequer as to use of Court House, etc.

3. 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. R. S. O., 1877, c. 37, s. 2.

VI.

PRIVY COUNCIL APPEALS.

EXTRACTS FROM

IMPERIAL STATUTES AND ORDERS IN COUNCIL

RELATING TO

PRACTICE IN APPEALS TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

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7 & 8 V., c. 69.

11. And be it enacted, that it shall and may be lawful for the said judicial committee to make any general rule or regulation, to be binding upon all courts in the colonies and other foreign settlements of the Crown, requiring the judges' notes of the evidence taken before such court on any cause appealed, and of the reasons given by the judges of such court or by any of them, for or against the judgment pronounced by such court; which notes of evidence and reasons shall by such court be transmitted to the clerk of the Privy Council within one calendar month next after the leave given by such court to prosecute any appeal to Her Majesty in council, and such order of the said committee shall be binding upon all judges of such courts in the colonies or foreign settlements of the Crown.

Rule issued by the Judicial Committee, directing judges of the Courts in the colonies and foreign settlements of the Crown to give their reasons in writing for the judgment appealed from, and to transmit the same with the record.

AT THE COUNCIL CHAMBER, WHITEHALL, THE 12TH FEB, 1845.
BY THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

WHEREAS, by an Act passed in the eighth year of Her Majesty's reign, intituled, etc., (here follows a recital of 7 & V., c. 69, s. 11).

Now, therefore, the lords of the said Judicial Committee of the Privy Council are pleased to order, as it is hereby ordered, that when any appeal shall be prosecuted from any judgment of any court in the colonies or foreign settlements of the Crown, the reasons given by the judges of such court, or by any of such judges, for or against such judgment shall be, by the judge or judges of such court communicated in writing to the registrar of such court, or other officer whose duty it is to prepare and certify the transcript record of the proceedings in the cause, and that the same be by him transmitted in original to the clerk of Her Majesty's Privy Council, at the same time when the documents and proceedings proper to be laid before Her Majesty in Council upon the hearing of the appeal are transmitted.

Whereof the judges of all such courts in the colonies or foreign settlements of the Crown are to take notice, and govern themselves accordingly.

C. C. GREVILLE.

ORDER IN COUNCIL.

[Regulating the present practice in appeals.]

AT THE COURT AT BUCKINGHAM PALACE, THE 13TH JUNE, 1853.

Present;—

THE QUEEN'S MOST EXCELLENT MAJESTY.
HIS ROYAL HIGHNESS PRINCE ALBERT.
LORD PRESIDENT.
LORD STEWARD.
DUKE OF NEWCASTLE.
DUKE OF WELLINGTON.
LORD CHAMBERLAIN.
EARL OF ABERDEEN.
EARL OF CLARENDON.
VISCOUNT PALMERSTON.
MR. HERBERT.
SIR JAMES GRAHAM, BT.

WHEREAS there was this day read at the board a report from the right honorable the lords of the judicial committee of the privy council, dated the 30th May last past, humbly setting forth that the lords of the judicial committee have taken into consideration the practice of the committee with a view to greater economy, despatch and efficiency in the appellate jurisdiction of her majesty in council, and that their lordships have agreed humbly to report to her majesty that it is expedient that certain changes should be made in the existing practice in appeals, and recommending that certain rules and regulations therein set forth should henceforth be observed, obeyed, and carried into execution, provided her majesty is pleased to approve the same.

Her majesty, having taken the said report into consideration, was pleased, by and with the advice of her privy

council, to approve thereof, and of the rules and regulations set forth therein, in the words following *videlicet*:—

1. That, any former usuage or practice of her majesty's privy council notwithstanding, an appellant who shall succeed in obtaining a reversal or material alteration of any judgment, decree or order appealed from, shall be entitled to recover the costs of the appeal from the respondent, except in cases in which the lords of the judicial committee may think fit otherwise to direct.

2. That the registrar or other proper officer having the custody of records in any court or special jurisdiction from which an appeal is brought to her majesty in council be directed to send by post, with all possible despatch, one certified copy of the transcript record in each cause to the registrar of her majesty's privy council, Whitehall; and that all such transcripts be registered in the privy council office, with the date of their arrival, the names of the parties, and the date of the sentence appealed from; and that such transcript be accompanied by a correct and complete index of all the papers, documents, and exhibits in the cause; and that the registrar of the court appealed from, or other proper officer of such court, be directed to omit from such transcript all merely formal documents, provided such omission be stated and certified in the said index of papers; and that especial care be taken not to allow any document to be set forth more than once in such transcript; and that no other certified copies of the record be transmitted to agents in England by or on behalf of the parties in the suit; and that the fees and expenses incurred and paid for the preparation of such transcript be stated and certified upon it by the registrar or other officer preparing the same.

3. That when the record of proceedings or evidence in

the cause appealed has been printed or partly printed abroad, the registrar or other proper officer of the court from which the appeal is brought shall be bound to send home the same in a printed form either wholly or so far as the same may have been printed, and that he do certify the same to be correct, on two copies, by signing his name on every printed sheet, and by affixing the seal, if any, of court appealed from to these copies, with the sanction of the court.

And that in all cases in which the parties in appeals shall think fit to have the proceedings printed abroad they shall be at liberty to do so, provided they cause fifty copies of the same to be printed in folio, and transmitted at their expense, to the registrar of the privy council, two of which printed copies, shall be certified as above by the officers of the court appealed from; and in this case no further expense for copying or printing the record will be incurred or allowed in England.

4. That on the arrival of a written transcript of appeal at the privy council office, Whitehall, the appellant or the agent of the appellant prosecuting the same shall be at liberty to call on the registrar of the privy council to cause it, or such part thereof as may be necessary for the hearing of the case, and likewise all such parts thereof as the respondent or his agent may require, to be printed by her majesty's printer, or by any other printer on the same terms, the appellant or his agent engaging to pay the costs of preparing a copy for the printer at a rate not exceeding one shilling per brief sheet, and likewise the cost of printing such record or appendix, and that one hundred copies of the same be struck off, whereof thirty copies are to be delivered to the agents on each side and forty kept for the use of the judicial committee; and that no other fees for solicitor's copies of the transcript or for drawing the joint

appendix, be henceforth allowed, the solicitors on both sides being allowed to have access to the original papers at the council office, and to extract or cause to be extracted and copied such parts thereof as are necessary for the preparation of the petition of appeal, at the stationer's charge, not exceeding one shilling per brief sheet.

5. That a certain time be fixed within which it shall be the duty of the appellant or his agent to make such application for the printing of the transcript, and that such time be within the space of six calendar months from the arrival of the transcript and the registration thereof in all matters brought by appeal from her majesty's colonies and plantations east of the Cape of Good Hope or from the territories of the East India Company, and within the space of three months in all matters brought by appeal from any other part of her majesty's dominions abroad; and that on default of the appellant or his agent taking effectual steps for the prosecution of the appeal within such time or times respectively, the appeal shall stand dismissed without further order, and that a report of the same be made to the judicial committee by the registrar of the privy council at their lordships' next sitting.

6. That, whenever it shall be found that the decision of a matter on appeal is likely to turn exclusively on a question of law, the agents of the parties, with the sanction of the registrar of the privy council, may submit such question of law to the lords of the judicial committee in the form of a special case (*a*) and print such parts only of the transcript as may be necessary for the discussion of the same; provided that nothing herein contained shall in any way bar or prevent the lords of the judicial committee from ordering the full discussion of the whole case, if they shall so

(*a*) *Lindo* v. *Barrett*, 9 Moo. P. C. C. 456.

think fit; and that in order to promote such arrangements and simplification of the matter in dispute, the registrar of the privy council may call the agents of the parties before him, and having heard them, and examined the transcript, may report to the committee as to the nature of the proceedings.

And her majesty is further pleased to order, and it is hereby ordered, that the foregoing rules and regulations be punctually observed, obeyed, and carried into execution in all appeals or petitions and complaints in the nature of appeals brought to her majesty, or to her heirs and successors, in council, from her majesty's colonies and plantations abroad, and from the Channel Islands or the Isle of Man, and from the territories of the East India Company, whether the same be from Courts of Justice or from special jurisdictions other than appeals from her majesty's Courts of Vice-Admiralty, to which the said rules are not to be applied.

Whereof the judges and officers of her majesty's courts of justice abroad, and the judges and officers of the superior courts of the East India Company, and all other persons whom it may concern, are to take notice and govern themselves accordingly. W. L. BATHURST.

ORDER IN COUNCIL.

[Explanatory of Order in Council of 13th June, 1853].

AT THE COURT AT BUCKINGHAM PALACE, THE 31ST OF MARCH, 1855.

Present:—THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS doubts have arisen with reference to the power of the judicial committee of the Privy Council to

suspend or relax, under certain special circumstances, the regulations in appeal causes established by Her Majesty's order in council of the 13th June, 1853;

Her Majesty, by and with the advice of her Privy Council, is pleased to order, and it is hereby ordered, that in appeal cases in which a petition of appeal to her majesty shall have been lodged, and referred by her majesty to the judicial committee, the said regulations shall be subject to any order or direction which, in the opinion of the lords of the Judicial Committee, the justice of any particular case may seem to require. C. C. GREVILLE.

ORDER IN COUNCIL.

For the regulation of the form and type to be used in the printing of the cases, records, and proceedings in appeals and other matters pending before the Lords of the Judicial Committee of the Privy Council.

AT THE COURT AT WINDSOR CASTLE, THE 24TH DAY OF MARCH, 1871.

Present:—THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS there was this day read at the board a representation from the lords of the Judicial Committee of the Privy Council, dated the 20th January, 1871, humbly recommending to Her Majesty in council that certain rules be established by the authority of her majesty, by and with the advice of her Privy Council, to be observed in the form

and type used in the printing of all cases, records, and other proceedings in appeals and other matters pending before the Judicial Committee of the Privy Council, her majesty having taken the said representation into consideration, and the schedule of rules hereunto annexed, was pleased, by and with advice of her Privy Council, to approve thereof, and to order, and it is hereby ordered, that the same be punctually observed, obeyed and carried into execution. Whereof the judges and officers of all the courts of justice in her majesty's dominions from which an appeal lies to her majesty in council, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

Schedule annexed to the foregoing order.

1. All cases, records and other proceedings in appeals, or other matters pending before the Judicial Committee of the Privy Council, are henceforth to be printed in the form known as demy quarto, and not in demy folio, as hath heretofore been used.

2. The size of the paper used is to be such, that the sheet, when folded, will be eleven inches in height and eight inches and a half in width.

3. The type to be used in the text is to be pica type, but long primer is to be used in printing accounts, tabular matter and notes.

4. The number of lines in each page of pica type is to be forty-seven, each line being five inches and three-quarters or 146 millimetres in length.

5. The foregoing rules do not apply to cases now pending in which the printing of the record is begun before the receipt of this order, but in all cases printed after the

receipt of this order, the form and type herein prescribed are to be used exclusively.

6. The price in England for printing 75 copies in the form herein established is to be thirty-eight shillings per sheet (eight pages) of pica, with marginal notes, not including corrections, tabular matter, and other extras.

7. The form of paper and type of the present order in council, with the pages hereunto annexed, are to serve as a specimen sheet or pattern for the printing of the proceedings before the Judicial Committee of the Privy Council. (*a*)

(*a*) The size of the present work prevents the exact reproduction of the specimen pages.

FORMS.

VII.

FORMS.

1. Notice of Appeal.
2. Bond for Security for Costs.
3. Affidavit of Execution.
4. Affidavit of Justification.
5. Certificate of Settlement of Case.
6. Appointment of Agent.
7. Judgment allowing Appeal.
8. Judgment dismissing Appeal.
9. Order made in Chambers.
10. Appellant's Bill of Costs.
11. Respondent's Bill of Costs.
12. Affidavit of Disbursements.

1. NOTICE OF APPEAL.

IN THE COURT OF APPEAL FOR ONTARIO.

(or as the case may be, giving the style of the Court in which the judgment to be appealed from has been rendered.)

Between

A. B. Plaintiff (appellant or respondent)

AND

C. D. Defendant (respondent or appellant)

(or as the case may require.)

Take notice, that A.B., the above named plaintiff, hereby appeals from the (judgment, decree, rule, order, *or* decision) pronounced (*or* pronounced and entered) in this cause (*or* matter) by this court (or by Mr. Justice ———) on the day of 18 , whereby *(as the case may be.)*

The above form, altered to suit the circumstances of each particular case, would be applicable to most cases, but care should be taken to consider the wording of the section or rule requiring notice of appeal to be given and to vary the notice accordingly. For instance, in giving notice of intention to appeal, under section 53 of chapter 16 of 50-51 Victoria, from the decision of the Exchequer Court, (see ante, p. 78) the notice should state "that the Crown is dissatisfied with such decision, and intends to appeal against the same." And the notice required by rule 269 of the Maritime Court is a notice of intention to appeal. See *ante* p. 80 and *post, addenda.*

And notice of appeal must not be confounded with the notice of hearing required after an appeal is set down for hearing in the Supreme Court, (see rules 13, 14 and 15, *ante* p. 108); nor with the notice to be given in Exchequer appeals under section 51 of chapter 16 of 50-51 Victoria, a notice additional to that required by section 53, (see *ante* p. 77) nor with the notice to be given in Election appeals, under sub-section 3 of section 51 of the Dominion Controverted Elections Act (see *ante* p. 84.) These notices are given after the appeal has been set down for hearing in the Supreme Court of Canada and should be entitled in that Court and the style of cause should be the style in that Court, and by them the appeal may be limited to any special and defined question or questions.

2. BOND FOR SECURITY OF COSTS.

(To be given under section 46 of the Supreme and Exchequer Courts Act. See *ante* p. 37.)

Know all men by these presents, that we A.B., of the of in the county of and Province of , C.D. of the same place , and E.F. of the same place , are jointly and severally held, and jointly bound unto G H., in the penal sum of $500, for which payment well and truly to be made we bind ourselves and each of us by himself, our and each of our heirs, executors and administrators firmly by these presents.

Dated this day of , A.D. 18

Whereas a certain action was brought in the Queen's Bench Division of the High Court of Justice for Ontario by the said A.B. plaintiff against the said G.H. defendant. And whereas judgment was given in the said Court against the said A.B., who appealed from the said judgment to the Court of Appeal for Ontario. And whereas judgment was given in the said action in the said last mentioned Court on the day of A.D. 1888. And whereas the said A.B. complains that in giving of the last mentioned judgment in the said action upon the said appeal manifest error hath intervened, wherefore the said A.B. desires to appeal from the said judgment of the Court of Appeal for Ontario to the Supreme Court of Canada.

Now the condition of this obligation is such, that if the said A.B. shall effectually prosecute his said appeal and pay such costs and damages as may be awarded against him by the Supreme Court of Canada, then this obligation shall be void, otherwise to remain in full force and effect.

Signed sealed and delivered in presence of

A.B. (SEAL.)
C.D. (SEAL.)
E.F. (SEAL.)

3. AFFIDAVIT OF EXECUTION.

Province of
County of
To Wit:

I, X. Y., of the of in the County of and Province of , , make oath and say:

1. That I was personally present and did see the within instrument duly signed, sealed and executed by A. B., C. D. and E. F., three of the parties thereto.

2. That the said instrument was executed at

3. That I know the said parties.

4. That I am a subscribing witness to the said instrument.

Sworn before me at the of in the county of and Province of this day of A.D. 18

X. Y.

(Signed)

A Commissioner, etc.

4. AFFIDAVIT OF JUSTIFICATION BY SURETIES.

I, C. D., of the of , in the County of , and Province of , make oath and say, That I am a resident inhabitant of the Province of , and am a freeholder in the of aforesaid, and that I am worth the sum of $1,000, over and above what will pay all my debts.

And I, E. F., of the of in the County of , and the Province of , make oath and say, That I am a resident inhabitant of the said Province of , and am a freeholder in the of aforesaid, and that I am worth the sum of $1,000, over and above what will pay all my debts.

(Signed)
C. D.
E. F.

The above named deponents, C. D. and E. F., were severally sworn before me in the of in the County of , and Province of , this day of , A.D., 18 .

(Signed)

A Commissioner, etc.

The affidavits should be entitled in the court in which security is given.

5. CERTIFICATE OF SETTLEMENT OF CASE.

I, the undersigned Registrar (or Prothonotary, *or* clerk) of the (*name of court*) do hereby certify that the foregoing printed document from page to page , inclusive, is the case stated by the parties (*or* settled by the Honourable Mr. Justice , one of the Judges of the said Court) pursuant to section 44 of the Supreme and Exchequer Courts Act and the rules of the Supreme Court of Canada, in an appeal to the said Supreme Court of Canada, in a certain cause pending in the said (*name of court*) between A. B., plaintiff (appellant) and C. D., defendant (respondent.)

(*If a printed copy of the Bond given as security for costs forms part of the case, the certificate may continue as follows:*)

And I do further certify that the said A. B. has given proper security to the satisfaction of the said the Honourable Mr. Justice , as required by the 46th section of the Supreme and Exchequer Courts Act, such security being a bond to the amount of $500, a printed copy of which is to be found on pages of the said printed document hereto annexed.

In testimony whereof I have hereto subscribed my name and affixed the seal of the said (*name of court*) this (*date.*)

See section 44 of the Supreme and Exchequer Courts Act, *ante* p. 34, and rules 1, 2, 3 and 4, *ante* p. 100. See also section 46, *ante* p. 37 and rule 6, *ante* p. 104.

6. APPOINTMENT OF AGENT.

See Rule 16, *ante* p. 109.

I, , of the City of , in the Province of , practising as an attorney and solicitor in the Superior Courts of the said Province hereby authorize , of the City of Ottawa, Esquire, to enter his name as my agent in the agents' book of the Supreme Court of Canada, and to act as such agent in all appeals to that court in which I may be concerned as attorney or solicitor, (*or, if the authority is to be limited*, in the following appeal, viz.,) (*date*)

---

7. JUDGMENT ALLOWING APPEAL.

In the Supreme Court of Canada.

day the day of A.D. 18 .

Present:

THE HONOURABLE SIR WILLIAM JOHNSTONE RITCHIE, KNIGHT, CHIEF JUSTICE.
THE HONOURABLE MR. JUSTICE STRONG.
" " MR. JUSTICE FOURNIER.
" " MR. JUSTICE TASCHEREAU.
" " MR. JUSTICE GWYNNE.
" " MR. JUSTICE PATTERSON.

(*If any Judge has been absent when judgment was rendered add* The HONOURABLE MR. JUSTICE , being absent his judgment was announced by THE HONOURABLE THE CHIEF JUSTICE, *or* MR. JUSTICE , pursuant to the statute in that behalf.)

Between A.B. (Plaintiff) Appellant.

AND

C.D. (Defendant) Respondent.

The appeal of the above named appellant from the judgment of the Court of Queen's Bench for Lower Canada

(appeal side) (*or* of the Court of Appeal for Ontario, *or as the case may be*) pronounced in the above cause on the day of in the year of our Lord , reversing the judgment of the Superior Court for Lower Canada sitting in and for the District of , (*or* of the Queen's Bench Division of the High Court of Justice for Ontario, *or as the case may be*) rendered in the said cause on the day of in the year of our Lord , having come on to be heard before this Court on the day of in the year of our Lord , in the presence of counsel as well for the appellant as the respondent, whereupon and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment and the same coming on this day for judgment, this Court did order and adjudge* that the said Appeal should be and the same was allowed, that the said judgment of the Court of Queen's Bench for Lower Canada (appeal side) (*or* of the said Court of Appeal for Ontario *or as the case may be*) should be and the same was reversed and set aside, and that the said judgment of the Superior Court for Lower Canada sitting in and for the District of (*or* of the Queen's Bench Division of the High Court of Justice for Ontario, *or as the case may be*) should be and the same was affirmed.

And this Court did further order and adjudge that the said respondent should and do pay to the said appellant the costs incurred by the said appellant as well in the said Court of Queen's Bench for Lower Canada (appeal side) (*or* in the said Court of Appeal for Ontario, *or as the case may be*) as in this Court.

(*In appeals from the Province of Quebec when distraction of costs has been asked for (see ante p. 52) add*: "the said costs *distraits* in favor of Messrs A. & B. attorneys for the said appellant.")

8. JUDGMENT DISMISSING APPEAL.

(Formal parts as in preceding down to * then proceed as follows:)

that the said judgment of the Court of Queen's Bench for Lower Canada (appeal side) (*or* of the Court of Appeal for Ontario, *or as the case may be*) should be and the same was affirmed, and that the said appeal should be and the same was dismissed with costs to be paid by the said appellant to the said respondent.

(*If distraction of costs asked for, conclude as in preceding form.*)

---

9. ORDER MADE IN CHAMBERS.

In the Supreme Court of Canada
the day of , 18 .

The Honourable Mr. Justice (*or* The Registrar) in Chambers.

Between A.B. (Plaintiff) Appellant.

AND

C.D. (Defendant) Respondent.

Upon hearing , and upon reading the affidavit of filed the day of 18 (and)

It is ordered (*here insert the order made*) and that the costs of this application, which are hereby fixed at the sum of be paid by the said to the said .

10. BILL OF APPELLANT'S COSTS.

In the Supreme Court of Canada,

Between

Appellant,

and

Respondent.

Bill of Appellant's Costs.	Fees.	Payments.
Notice of appeal	$ 4 00	
[In election appeals, when notice limits appeal	6 00]	
Notice of giving security	2 00	
Attendance on giving security and paid.	3 00	
Fee on special case	25 00	
[Not taxable in election appeals.]		
Engrossing and superintending printing of special case, fos. at 15 cents per folio		
[Not taxable in election appeals.]		
Paid printer as per affidavit		
Paid clerk on transmission, etc., of original case, or record in an election appeal		
Paid forwarding copies of case		
Paid filing case with registrar		$10 00
Engrossing and superintending printing of factum, fos. at 15 cents per folio		
Paid printer as per affidavit		
Fee on factum [in the discretion of registrar to]		50 00

Bill of Appellant's Costs.	Fees.	Payments.
Paid search and inscribing appeal		$ 35
Allowance to cover fees to counsel and solicitor on hearing [in the discretion of the registrar to]	$200 00	
Paid postages, telegrams, etc.....		
Allowance on account of agent's fees under Rule 82 [in the discretion of registrar to]		20 00
Paid search for particulars, to draft minutes		25
Paid entry of judgment		10 00
Paid taxation and appointment		1 50
Allocatur		1 00
Paid filings [10 cents on each filing] ...		
Paid certified copy of judgment..... [$1 00, and 10 cents a folio.]		
Registrar's postage		
Total fees,.....$		$
Total disbursements, ...$		
Taxed off .....$		
Taxed at $		

---

11. BILL OF RESPONDENT'S COSTS.

In the Supreme Court of Canada,

Between

Appellant,

and

Respondent.

Bill of Respondent's Costs.	Fees.	Payments.
Attendance on giving security ..... [Not taxable in election appeals.]	$ 3 00	

Bill of Respondent's Costs.	Fees.	Payments.
Fee on special case.....	$25 00	
[Not taxable in election appeals.]		
Engrossing and superintending printing of factum, fos. at 15 cents per folio		
Paid printer as per affidavit		
Fee on factum [in the discretion of registrar to].....	50 00	
Allowance to cover fees to counsel and solicitor on hearing [in the discretion of registrar to]	200 00	
Paid postages, telegrams, etc		
Allowance on account of agent's fees under Rule 82 [in discretion of registrar to]		$20 00
Paid search for particulars, to draft minutes		25
Paid entry of judgment		10 00
Paid taxation and appointment		1 50
Allocatur		1 00
Paid filings [10 cents on each filing] ...		
Paid certified copy of judgment		
[$1.00, and 10 cents for each folio.]		
Registrar's postage.....		
Total fees,.....$		
Total disbursements, ...$		
Taxed off .....$		
Taxed at $		

12. AFFIDAVIT OF DISBURSEMENTS.

In the Supreme Court of Canada,

BETWEEN

( ) appellant,

and

( ) respondent.

I, of the of in the Province of (*occupation*) make oath and say:

1. That I am (*a member of the firm of, etc., or a clerk in the office of, etc.*), the attorneys or solicitors for the above named and as such have a personal knowledge of the facts hereinafter deposed to.

2. That on behalf of the said (*appellant or respondent*) I have paid of the of in said Province, printers, the sums following for the work mentioned, viz.:

DATE PAID.	PRINTING DONE.	AMOUNT PAID.
	("Case in Appeal." "Appellant's or Repondent's Factum.")	$
		Total, $

amounting in all to the sum of $\frac{}{100}$ dollars.

3. That in addition to the foregoing, I have paid the following sums in this appeal, viz.:

4. That with regard to the foregoing disbursements, I believe that the amount so paid for printing is fair and reasonable, and the usual and lowest price for which that class of work can be done in the said of and that the foregoing amounts further paid as aforesaid were reasonable and proper disbursements in this appeal.

Sworn before me at the of in the Province of this day of A.D., 18

A Commissioner in the

ADDENDA.

I.

Since the foregoing pages were printed the court has decided the following cases bearing on the jurisdiction and practice of the court.

I. *Robertson* v. *Wigle*. Referred to at page 81.

JURISDICTION—RULE 269, MARITIME COURT OF ONTARIO—NOTICE OF INTENTION TO APPEAL.

Held, 1. *Per* Ritchie, C.J., and Fournier and Gwynne, JJ., That Rule 269 of the Maritime Court of Ontario relates to procedure only and does not affect the jurisdiction of the Supreme Court, and could therefore be waived and was waived. If it did purport to affect the jurisdiction it would be *ultra vires* of the power given to the Maritime Court to make rules.

2. *Per* Ritchie, C.J., and Strong, Fournier and Gwynne, JJ., That the judgment of the court below was not pronounced by the judge in open court, but merely handed by him to the registrar to be communicated to the parties, and therefore did not take effect until entered by the registrar; and that within fifteen days from that date the solicitors for the appellant gave sufficient notice of their intention to appeal by a letter written to the solicitors for the respondent.

3. *Per* Taschereau, J., That compliance with the rule was a condition precedent to the exercise of jurisdiction by the Supreme Court, and that the notice of intention to appeal was not sufficient.

Motion to quash dismissed with costs. 11th October, 1888.

II. *Muir* v. *Carter*.

JURISDICTION—VALUE OF MATTER IN CONTROVERSY—BANK SHARES—SEC. 29, SUPREME AND EXCHEQUER COURTS ACT.

Motion to quash for want of jurisdiction, on the ground that the value of the matter in controversy did not amount to $2,000.

The appeal arose out of an opposition filed by the appellant to the seizure of thirty-three shares of Molson's Bank stock, part of a larger number seized under a writ of execution to levy $31,125 and interest pursuant to a judgment obtained in a suit of *Carter* v. *Molson*. The par value of the stock was $50 per share, equal to $1,650, but it was shown by affidavit, to the satisfaction of the learned chief justice of the Court of Queen's Bench of the Province of Quebec, that at the time the opposition was filed and the appeal brought the shares were worth $2,560. The chief justice therefore allowed the appeal.

Held, That under section 29 of the Supreme and Exchequer Courts Act the sum or value of the matter in controversy determined the right to appeal, and such value was the actual value of the shares, which was properly established by affidavit to be over $2,000.

Taschereau, J., dissenting, on the ground that the right to appeal was governed by the statutory value of the shares, $50 per share, and not by their market value.

Motion dismissed with costs. 11th October, 1888.

III. *Les Ecclésiastiques du Séminaire de St. Sulpice de Montréal* v. *La Cité de Montréal*.

JURISDICTION—FUTURE RIGHTS—SEC. 29, SUPREME AND EXCHEQUER COURTS ACT.

Motion to quash for want of jurisdiction on the ground that the matter in controversy was under $2,000, and did not come within any of the exceptions in sec. 29 of the Supreme and Exchequer Courts Act.

The action was brought to recover $361.90, the amount of a special assessment for a drain along the property of the defendants.

Held, That the case came within the words "such like matters or things where rights in future might be bound" in par. 6 of sec. 29, and was therefore appealable.

Motion dismissed with costs. 11th October, 1888.

IV.—*Angus* v. *The Board of Trustees for the School District of Calgary.*

JURISDICTION—CASE NOT ORIGINATING IN A SUPERIOR COURT—APPEAL FROM COURT OF REVISION—SUPREME COURT, N. W. T.

A., *et al.*, the appellants, were assessed by the assessor of the Board of Trustees of the School District of Calgary for certain property in the town of Calgary. The appellants being dissatisfied appealed to the Court of Revision, and being dissatisfied with the decision of the Court of Revision, also appealed under Ordinance 3 of 1885, of the North-west Territories, to the District Court of the High Court of Justice, in which the school district was situated. By Ordinance 5 of 1885, in force when the appeal was taken, the District Courts which were presided over by the Stipendiary Magistrates of the North-west Territories had been merged into the High Court of Justice. The appeal to the District Court of the High Court of Justice was initiated by notice of appeal entered with the clerk of the district court, who issued an ordinary summons returnable at the next sittings of the court, such summons having the notice of appeal attached to it, and the Trustees being defendants. At the time of the hearing of the appeal to the district court, the High Court of Justice, thus established by Ordinance 5 of 1885 had merged into the Supreme Court of the North-west Territories by the Dominion Act. 49 Vic. cap. 25, which came into force by proclamation on the 18th February, 1887. The district court, presided over by Rouleau, J., affirmed the decision of the Court of Revision, and the appellants appealed to the Supreme Court of the North-west Territories in banc, which court sustained the decision of Rouleau, J., and the appellants then appealed to the Supreme Court of Canada.

Held, that the appeal would not lie; the proceedings not having originated in a Superior Court.

Appeal quashed with costs. 25th Oct., 1888.

NOTE.—This appeal was brought before the passing of 51 Vic. cap. 37, which has amended section 24 of the Supreme and Exchequer Courts Act by adding paragraph (i) to that section. Now, by virtue of this amendment, appeals lie to the Supreme Court of Canada "by leave of the court or a judge thereof from the decision of the Supreme Court of the North-west Territories, although the matter may not have originated in a Superior Court." See *ante*, p. 13.

The following case should also have been noted on the subject of jurisdiction:

V.—*Walsh* v. *Hefferman.*

JURISDICTION—QUO WARRANTO.

An appeal from a decision of the Court of Queen's Bench for Lower Canada (appeal side), (M. L. R. 2 Q. B. 482), was quashed for want of jurisdiction, the proceedings being by *quo warranto*, as to which no appeal is given by the statute.

3rd March, 1887.

II.

Sections of the Railway Act, 51 Vic. cap. 29, respecting cases to be stated for the opinion of the Supreme Court of Canada by the Railway Committee of the Privy Council.

Section 19. The Railway Company may, if it thinks fit, at the instance of any party to the proceedings before it, and upon such security being given as it directs, state a case in writing for the opinion of the Supreme Court of Canada upon any question which in the opinion of the committee is a question of law.

Section 20. The Supreme Court of Canada shall hear and determine the question or questions of law arising thereon and remit the matter to the Railway Committee, with the opinion of the court thereon.

Under these sections there has been stated for the opinion of the court a case on the application of the Hon. Joseph Martin, Railway Commissioner for Manitoba *in re* the crossing by the Portage extension of the Red River Valley Railway and the Pembina Mountain Branch of the Canadian Pacific Railway.

This is the first case referred under these sections.

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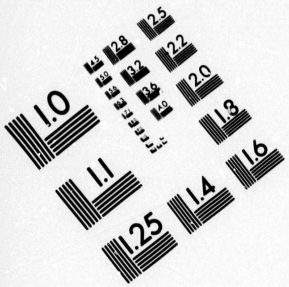

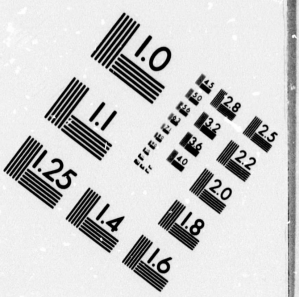

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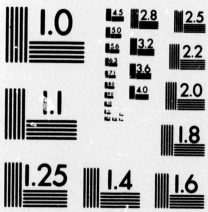

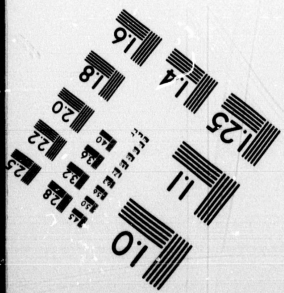

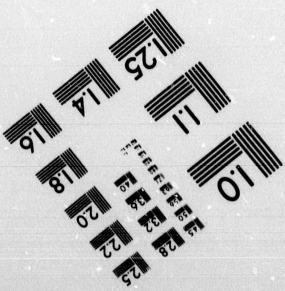

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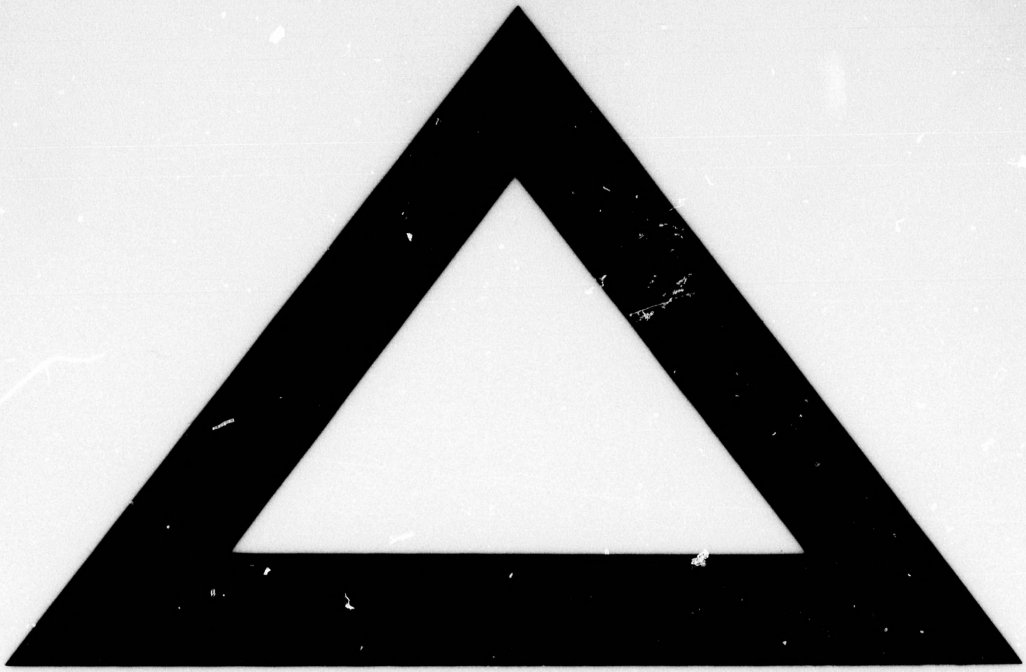
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